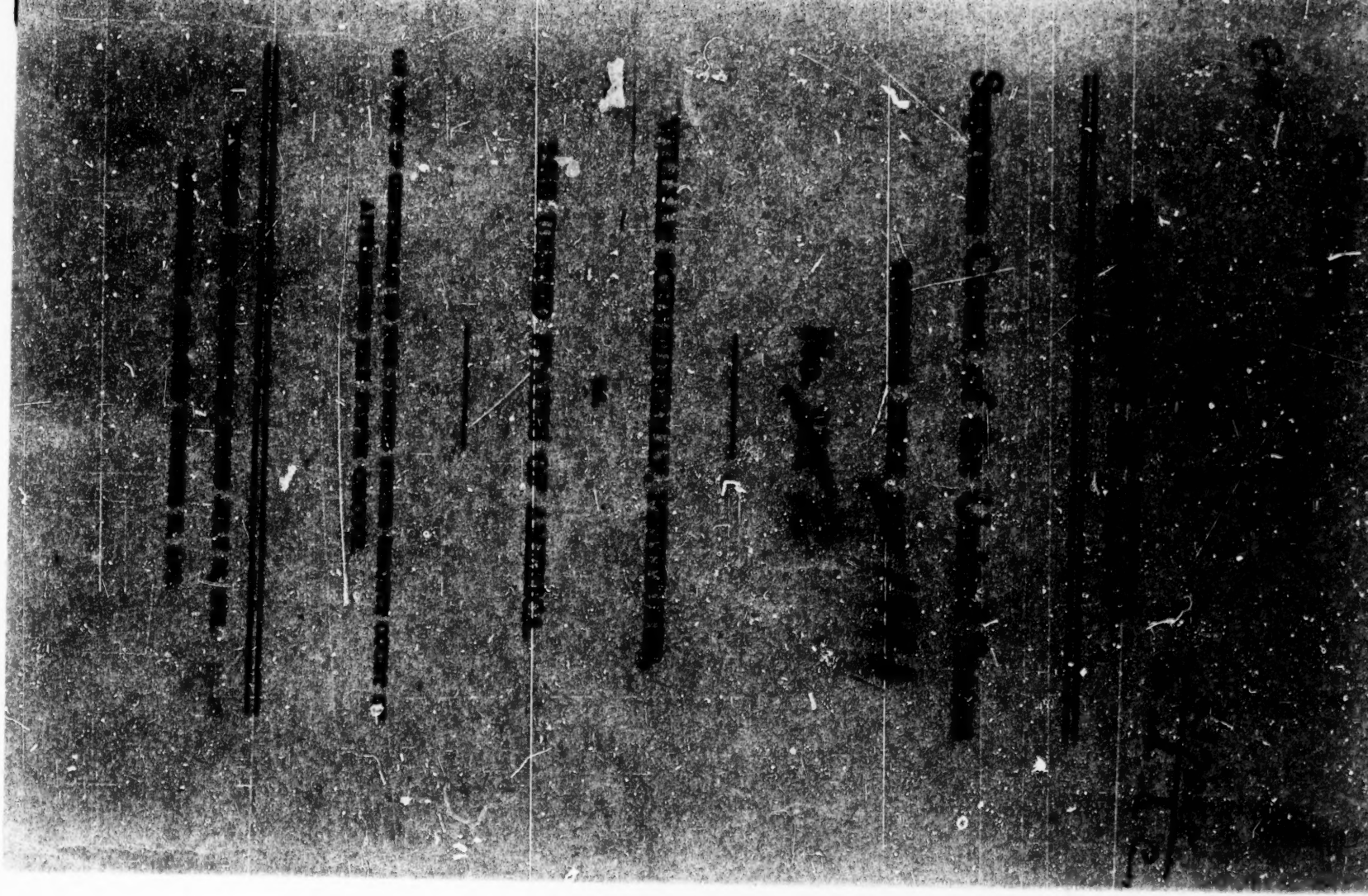

No. 9658

United States

Circuit Court of Appeals

For the Ninth Circuit.

WILLIAM SCHNEIDERMAN, also known as VELVEL SCHNEIDERMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 476

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

PARKER PRINTING COMPANY, 345 SANSOME STREET, SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the United States District Court for the Northern District of California

No. 21257-R

UNITED STATES OF AMERICA,
Petitioner,

vs.

WILLIAM SCHNEIDERMAN, also known as VELVEL SCHNEIDERMAN,
Respondent.

COMPLAINT

The United States of America, by Frank J. Hennessy, United States Attorney for the Northern District of California, brings this complaint under the provisions of section 15 of the Act of Congress approved June 29, 1906, (34 Stat. U. S. L. Part 1.

page 696) against William Schneiderman, also known as Velvel Schneiderman, and complains and says:

I.

That on the 10th day of June, 1927, the respondent, William Schneiderman, also known as Velvel Schneiderman, a native and former citizen of Russia, and a resident of the State of California, appeared before the United States District Court for the Southern District of California, Central Division, and by decree of said Court entered on the 10th day of June, 1927, was then and there admitted and [1*] declared to be a citizen of the United States of America, and a certificate of citizenship numbered 2608994 was thereupon issued to him by said court as documentary evidence of said naturalization.

II.

That by virtue and under the color of said decree of naturalization of William Schneiderman, also known as Velvel Schneiderman, as well as said certificate of citizenship No. 2608994, issued under and pursuant thereto, and not otherwise, said respondent claims to be a legally naturalized citizen of the United States, and as such naturalized citizen entitled to all the rights, benefits, privileges, immunities and protection accorded naturalized citizens of the United States.

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*Page numbering appearing at foot of page of original certified Transcript of Record.

III.

That before the filing of this complaint, affidavit was executed by Robert M. Charles, attorney for the Immigration and Naturalization Service, United States Department of Labor, showing good and sufficient cause for the institution of this proceeding as required by the provisions of section 15 of the aforesaid act of Congress of June 29, 1906, which affidavit is hereto attached, marked Exhibit "A", and made a part hereof the same as if set forth herein.

IV.

That said decree and certificate of naturalization were illegally procured and obtained in this: That respondent was not, at the time of his naturalization by said court, and during the period of five years immediately preceding the filing of his petition for naturalization, respondent had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, but in truth [2] and in fact during all of said times, respondent was a member of and affiliated with and believed in and supported the principles of certain organizations then known as the Workers (Communist) Party of America and the Young Workers (Communist) League of America, whose principles were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence.

V.

That at all times subsequent to the entry of said decree of naturalization respondent has continued to be, and now is, a member of and affiliated with organizations, to-wit, the Workers (Communist) Party of America and the Young Workers (Communist) League of America and the Communist Party of the United States and the Young Communist League of the United States, whose principles are opposed to the principles of the Constitution of the United States and advise, advocate and teach the overthrow of the Government, Constitution and laws of the United States by force and violence, and during all of said times respondent has continued to believe in and support said principles of said organizations.

VI.

That said decree and certificate of naturalization were fraudulently procured and obtained in this: That respondent concealed from said United States District Court for the Southern District of California, Central Division, at the time of said hearing or said petition for naturalization, the facts that at the time of filing said petition and at the time of said hearing and during the period of five years immediately preceding the filing of said petition he was a member of and affiliated with certain organizations [3] which were then known as the Workers (Communist) Party of America and the Young Workers (Communist) League of America, and

that during all said times he believed in and supported the principles of said organizations as aforesaid, and by reason of this concealment said Court was deceived and admitted respondent to citizenship, and said concealment was material in this: That at all times herein mentioned the principles of said organizations were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence.

VII.

That respondent now resides in the city and county of San Francisco, State of California, and within the jurisdiction of this court, the last known address of respondent being 121 Haight Street in said city, county and state.

Wherefore, your petitioner prays that the said respondent be compelled to answer all and singular the premises of this complaint; that said decree of naturalization be set aside, revoked, canceled and declared null and void; that respondent be required to surrender up to this court for cancellation the said certificate of naturalization No. 2608994 and that said respondent, as well as all others claiming by, through or under said naturalization be divested of their status of American citizenship illegally and fraudulently procured and obtained, as aforesaid, and that the said respondent as well as all others claiming American citizenship by, through, or under

his said naturalization, be forever restrained and enjoined from setting up, claiming or exercising any rights, privileges, benefits, immunities or protection as citizens of the United States of America under said decree of naturalization or said certificate of naturalization issued [4] thereunder, and that your petitioner have such other and further relief as the circumstances of the case may require, and as in equity and good conscience may seem meet.

Plaintiff further prays that upon the entry of a final decree in this case as heretofore prayed that the same be entered and spread upon the records of this court pertaining to the naturalization of said respondent heretofore referred to, and that said respondent be required to forthwith surrender and deliver his said certificate of naturalization to the Clerk of this Court for cancellation, and that the Clerk of this Court be further directed to transmit a certified copy of said final decree to the Bureau of Naturalization, Department of Labor, Washington, D. C., together with the cancelled certificate of naturalization No. 2608994 of said respondent.

FRANK J. HENNESSY
United States Attorney [5]

EXHIBIT "4"

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C-2608994

United States of America,
District of Columbia—ss.

Robert M. Charles, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Labor, and as such has access to the official records of said Service, from which the following facts appear:

2. That William Schneiderman, then known as Velvel Schneiderman, a native and then a subject of Russia, made declaration of intention No. 26427 on February 8, 1924, in the U. S. District Court at Los Angeles, California, in the name of Velvel Schneiderman, filed petition for naturalization No. 18758 in the same Court on January 18, 1927, at which time he requested that his name be changed to William Schneiderman, and he was admitted to citizenship on June 10, 1927, certificate of naturalization No. 2608994 being issued to him on the latter date in the name of William Schneiderman;

3. That the said William Schneiderman stated under oath in said petition for naturalization that he was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government; also, he stated therein that he was attached to the principles of the Constitution of the United States; that the

said petition for naturalization was verified by the joint affidavit of one Albert J. Bock and one Minnie Karasick, each of whom stated that he/she had personal knowledge that the said petitioner was a person of good moral character, attached to the principles of the Constitution of the United States and in every way qualified in affiant's opinion, to be admitted a citizen of the United States; and, that before he was admitted to citizenship the said William Schneiderman declared on oath in open court that he would support the Constitution of the United States, and that he would support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same;

4. That in truth and in fact during the five years immediately preceding the filing of his said petition for naturalization, and from the date of said petition to the time of his admission to citizenship, the said William Schneiderman did not behave as a person attached to the principles of the Constitution of the United States, and he was not attached to such principles, but during said five-year period, and thereafter he was a member of an organization, to wit—the Workers (Communist) Party of America, which organization is opposed to the Government of the United States, and teaches and advocates the overthrow of the Government of the United States by force and violence; [6]

5. That the naturalization of the said William Schneiderman was fraudulently and illegally procured in violation of the third and fourth subdivi-

sions of Section 4 of the Naturalization Act of June 29, 1906 (34 Stat. 596; U. S. C., T. 8, secs. 381 and 382), in that:

(a) At the time of filing his petition for naturalization and at the time of his admission to citizenship he was not attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same, and during the five-year period immediately preceding the filing of his petition for naturalization he had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same; and

(b) At the time he took said oath of allegiance, he did not in fact intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

6. That good cause exists for the institution of a suit under Section 15 of the said 1906 Act, supra (34 Stat. 601; U. S. C., T. 8, sec. 405), to set aside and cancel the certificate of naturalization of the said William Schneiderman as having been fraudulently and illegally procured;

7. That the last known place of residence of the said William Schneiderman is San Francisco, California.

(Signed) ROBERT M. CHARLES

Subscribed and sworn to before me, a Notary Public of the District of Columbia, this 20th day of June, 1939.

[Seal] (Signed) J. LOUIS BIXLER
Notary Public, District of Columbia

Commission expires September 8, 1939.

[Endorsed]: Filed Jun. 30, 1939. [7]

[Title of District Court and Cause.]

ANSWER

Comes now the respondent, William Schneiderman, and for answer to the complaint on file herein, admits, denies and alleges as follows:

I.

Admits the substance of the allegations contained in paragraph I of said complaint.

II.

Admits the material allegations contained in paragraph II of said complaint.

III.

Replying to paragraph III of said complaint, respondent avers that he has no information or belief sufficient to enable him to answer the allegations therein contained; and basing his denial upon such lack of information and belief, denies each and every, all and singular, generally and specifically, the allegations in [8] said paragraph contained.

IV.

Replying to paragraph IV of said complaint, this respondent denies each and every, all and singular, generally and specifically the allegations therein contained, but admits that at the time and place alleged in said paragraph, respondent was a member of the Communist Party of the United States of America.

V.

Replying to paragraph V of said complaint, your respondent denies each and every, all and singular, generally and specifically, the allegations therein contained save and except that this respondent admits that at all times subsequent to the entry of said decree of naturalization respondent has continued to be and now is, a member of the Communist Party of the United States of America.

VI.

Replying to paragraph VI of said complaint, respondent denies each and every, all and singular, generally and specifically, the allegations therein contained; and in particular this respondent denies that at any time during which said respondent was a member of said organization that said organization, or the principles of said organization, or the tenets of said organization, or the teachings of said organization, or the belief of said organization, or either of them were opposed or contrary to the principles of the Constitution of the United States of America; and specifically denies that

either said respondent or said organization advised or advises, advocated or advocates, taught or teaches, the overthrow of the Government, or the Constitution, or the laws, or the Government, Constitution and laws of the United States of America by force and violence or force or violence.

VII.

Respondent admits the allegations in said paragraph contained. [9]

And as and for a separate, further and distinct defense to said complaint, and the alleged cause of action therein purportedly stated, respondent denies that at any time during which he was a member of said Communist Party of the United States of America, that said organization believed in, taught, or advocated the overthrow of the Government of the United States of America, its Constitution, or its laws; and specifically denies that during said time the said Communist Party of the United States advised, advocated, or taught the overthrow of the Government of the United States, its Constitution and laws, or said Government, Constitution, or laws, by force and violence, or force or violence, or by any other manner, or at all.

And in this connection, respondent alleges that respondent and the said Communist Party of the United States of America believes in, advocates, teaches, and is committed to uphold the achievements of democracy and the rights of and to, life, liberty, and the pursuit of happiness; and to defend

the United States Constitution against all of its enemies.

And as and for a further, separate and distinct defense to said complaint on file herein, respondent attaches hereto and makes a part hereof as though set out in haec verba, a copy of the Constitution of the Communist Party of the United States of America, which is marked Exhibit "A", and alleges that the aims, purposes and objects of said Constitution sets forth the aims, purposes, objects, beliefs, advocacies and teachings of said organization during all of the times alleged in said complaint on file herein.

Wheretofore, having fully answered, respondent prays that petitioner be awarded no relief by its complaint and that said complaint be dismissed.

Dated: September 20th, 1939.

GEORGE R. ANDERSEN,
Attorney for Respondent. [10]

State of California
City and County of San Francisco—ss.

William Schneiderman, being first duly sworn, deposes and says: that he is the person named in the within and foregoing answer; that he has read the same and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

WILLIAM SCHNEIDERMAN.

Subscribed and sworn to before me this 22nd day of September, 1939.

NANCY EVERETT,

Notary Public in and for the City and County of San Francisco, State of California. [11]

CONSTITUTION AND BY-LAWS, COMMUNIST PARTY, U. S. A.

Unanimously Adopted by Its Tenth National Convention, New York, May 26 to 31, 1938, Submitted in Final Form for Ratification by the Membership.

Preamble

The Communist Party of the United States of America is a working class political party carrying forward today the traditions of Jefferson, Paine, Jackson and Lincoln, and of the Declaration of Independence; it upholds the achievements of democracy, the rights of "life, liberty, and the pursuit of happiness," and defends the United States Constitution against its reactionary enemies who would destroy democracy and all popular liberties; it is devoted to defense of the immediate interests of workers, farmers, and all toilers against capitalist exploitation, and to preparation of the working class for its historic mission to unite and lead the American people to extend these democratic principles to their necessary and logical conclusions:

By establishing common ownership of the national economy, through a government of the people, by the people, and for the people; the abolition of all

exploitation of man by man, nation by nation, and race by race, and thereby the abolition of class divisions in society; that is, by the establishment of Socialism, according to the scientific principles enunciated by the greatest teachers of mankind, Marx, Engels, Lenin and Stalin, embodied in the Communist International; and the free cooperation of the American people with those of other lands, striving toward a world without oppression and war, a world brotherhood of man.

To this end, the Communist Party of the United States of America, establishes the basic laws of its organization in the following Constitution:

Article I

Name

The name of this organization shall be the Communist Party of the United States of America.

Article II

Emblem

The emblem of the Party shall be the crossed hammer and sickle, representing the unity of worker and farmer, with a circular margin having at the top "Communist Party of the U. S. A." and underneath "Affiliated to the Communist International."

Article III

Membership

Section 1. Any person, eighteen years of age or over, regardless of race, sex, color, religious belief,

or nationality, who is a citizen or who declares his intention of becoming a citizen of the United States, and whose loyalty to the working class is unquestioned, shall be eligible for membership.

Section 2. A Party member is one who accepts the Party program, attends the regular meetings of the membership branch at his place of work or in his territory or trade, who pays dues regularly and is active in Party work.

Section 3. An applicant for membership shall sign an application card which shall be endorsed by at least two members of the Communist Party. Applications are subject to discussion and decision by the basic organization of the Party (shop, industrial, neighborhood branch). After the applicant is accepted by a majority vote of the membership of the organization he shall publicly pledge as follows:

> "I pledge firm loyalty to the best interests of the working class and full devotion to all progressive movements of the people. I pledge to work actively for the preservation and extension of democracy and peace, for the defeat of fascism and all forms of national oppression, for equal rights to the Negro people and for the establishment of Socialism. For this purpose, I solemnly pledge to remain true to the principles of the Communist Party, to maintain its unity of purpose and action, and to work to the best of my ability to fulfil its program."

Section 4. There shall be no members-at-large without special permission of the National or State Committee.

Section 5. Party members, two months in arrears in payment of dues, cease to be members of the Party in good standing, and must be informed thereof.

Section 6. Members who are four months in arrears shall be stricken from the Party rolls. Every member, three months in arrears, shall be officially informed of this provision, and a personal effort made to bring such member into good standing. However, if a member who for these reasons has been stricken from the rolls applies for re-admission within six months, he may, on the approval of the leading Party committees, be permitted to pay up his back dues and keep his standing as an old member.

Article IV

Initiation and Dues

Section 1. The initiation fee for an employed person shall be 50 cents, for an unemployed person, 10 cents.

Section 2. Dues shall be paid every month according to rates fixed by action of the Party convention.

Section 3. The income from dues is distributed to the various Party organizations as follows:

a. 25 per cent to the Branch.

b. 35 per cent to the National Office.

c. The remaining 40 per cent shall be distributed between the respective State, County, City and Section organizations in accordance with decisions of the State Conventions.

Section 4. Fifty per cent of the initiation fee shall be sent to the National Committee and 50 per cent shall remain with the State organization.

ARTICLE V

International Solidarity and Assessment

Section 1. Every four months, all members of the Party shall pay an assessment amounting to the average dues payment per month for the previous four months, for an International Solidarity Fund. This money shall be used by the National Committee exclusively to aid our brother Communist Parties in other countries suffering from fascist and military reaction.

Section 2. All local or district assessments are prohibited, except by special permission of the National Committee. Special assessments may be levied by the National Convention or the National Committee. No member is considered in good standing unless he purchases such special assessment-stamps.

ARTICLE VI

Rights and Duties of Members

Section 1. The Communist Party of the U.S.A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy whereby the majority of the American people have

obtained power to determine their own destiny in any degree. The Communist Party of the U.S.A., standing unqualifiedly for the right of the majority to direct the destinies of our country, will fight with all its strength against any and every effort whether it comes from abroad or from within, to impose upon our people the arbitrary will of any selfish minority group or party or clique or conspiracy.

Section 2. Every member of the Party who is in good standing has not only a right, but a duty, to participate in the making of the policies of the Party and in the election of its leading committees, in a manner provided for in the Constitution.

Section 3. In matters of state or local nature, the Party organizations have the right to exercise full initiative and to make decisions within the limits of the general policies and decisions of the Party.

Section 4. After thorough discussion, the majority vote decides the policy of the Party, and the minority is duty-bound to carry out the decision.

Section 5. Party members disagreeing with any decision of the Party organization or committee have the right to appeal that decision to the next higher body, and may carry the appeal to the highest bodies of the Communist Party of the U.S.A., its National Committee and the National Convention. Decisions of the National Convention are final. While the appeal is pending, the decision must nevertheless be carried out by every member of the Party.

Section 6. In pre-Convention periods, individual Party members and delegates to the Convention, enjoy unrestricted rights of discussion on any question of Party policy and tactics and the work and future composition of the leading committees.

Section 7. The decisions of the Convention shall be final and every Party member and Party organization shall be duty-bound to recognize the authority of the Convention decisions and the leadership elected by it.

Section 8. All Party members in mass organizations (trade unions, farm and fraternal organizations, etc.) shall cooperate to promote and strengthen the given organization and shall abide by the democratic decisions of these organizations.

Section 9. It shall be the duty of Party members to explain the mass policies of the Party and the principles of Socialism.

Section 10. All Party members who are eligible shall be required to belong to their respective trade unions.

Section 11. All officers and leading committees of the Party from the Branch Executive Committee up to the highest committees are elected either directly by the membership or through their elected delegates. Every committee must report regularly on its activities to its Party organization.

Section 12. All Party officers may be removed at any time from their position by a majority vote of the body which elected them, or by the body to which they are responsible, with the approval of the National Committee.

Section 13. Requests for release of a Party member from responsible posts can be granted only by the Party organization which elected him, or to which he is responsible, in consultation with the next higher committee.

Section 14. No Party member shall have personal or political relationship with confirmed Trotzkyites, Lovestoneites, or other known enemies of the Party and of the working class.

Section 15. All Party members eligible shall register and vote in the elections for all public offices.

Article VII

Structure of the Party

Section 1. The basic organizations of the Communist Party of the U.S.A. are the shop, industrial and territorial branches.

The Executive Committee of the Branch shall be elected once a year by the membership.

Section 2. The Section Organization shall comprise all Branches in a given territory of the city or state. The Section territory shall be defined by the higher Party committee and shall cover one or more complete political divisions of the city or state.

The highest body of the Section Organization is the Section Convention, or special annual Council meeting, called for the election of officers, which shall convene every year. The Section Convention or special Council meeting discusses and decides on policy and elects delegates to the higher Convention.

Between Section Conventions, the highest Party body is the Section Council composed of delegates elected proportionately from each Branch for a period of one year. Where Councils do not exist, the highest Party body is the Section Committee elected by a majority vote of the Section Convention, which also elects the Section Organizer.

The Section Council or Section Committee may elect a Section Executive Committee which is responsible to the body that elected it. Non-members of the Section Council can be elected to the Executive Committee only with the approval of the next higher committee.

Section 3. In localities where there is more than one section organization, a City, or County Council or Committee may be formed in accordance with the By-Laws.

Section 4. The State Organization shall comprise all Party organizations in one State.

The highest body of the State Organization is the State Convention, which shall convene every two years, and shall be composed of delegates elected by the Conventions of the sub-divisions of the Party or Branches in the State. The delegates are elected on the basis of numerical strength.

A State Committee of regular and alternate members shall be elected at the State Convention with full power to carry out the decisions of the Convention and conduct the activities of the Party organization until the next State convention.

The State Committee may elect from among its members an Executive Committee, which shall be responsible to the State Committee.

Special State Conventions may be called either by a majority vote of the State Committee, or upon written requests of the Branches representing one-third of the membership of the State, with the approval of the National Committee.

Section 5. District Organizations may be established by the National Committee, covering two or more states. In such cases the State Committees shall be under the jurisdiction of the District Committees, elected by and representing the Party organizations of the states composing these Districts. The rules of convening District Conventions, the elections of leading committees, shall be the same as that provided for the State organization.

Article VIII

National Organization

Section 1. The Supreme authority in the Communist Party of the U.S.A. is the National Convention. Regular Conventions shall be held every two years. Only such a National Convention is authorized to make political and organizational decisions binding upon the entire Party and its membership.

Section 2. The National Convention shall be composed of delegates elected by the State and District Conventions. The delegates are elected on the basis of numerical strength of the State organizations.

The basis for representation shall be determined by the National Committee.

Section 3. For two months prior to the Convention, discussions shall take place in all Party organizations on the main resolutions and problems coming before the Convention. During this discussion all party organizations have the right and duty to adopt resolutions and amendments to the Draft Resolutions of the National Committee for consideration at the Convention.

Section 4. The National Convention elects the National Committee, a National Chairman and General Secretary by majority vote. The National Committee shall be composed of regular and alternate members. The alternate members shall have voice but no vote.

Section 5. The size of the National Committee shall be decided upon by each National Convention of the Party. Members of the National Committee must have been active members of the Party for at least three years.

Section 6. The National Committee is the highest authority of the Party between Party Conventions, and is responsible for enforcing the Constitution and securing the execution of the general policies adopted by the democratically elected delegates in the National Convention assembled. The National Committee represents the Party as a whole, and has the right to make decisions with full authority on any problem facing the Party between Conventions. It organizes and supervises the various

departments and committees of the National Committee of the Party; conducts all its political and organizational work; appoints or removes the editors of its press, who work under its leadership and control; organizes and guides all undertakings of importance for the entire Party; distributes the Party forces and controls the central treasury. The National Committee, by majority vote of its members, may call special State or National Conventions. The National Committee shall submit a certified, audited financial report to each National Convention.

Section 7. The National Committee elects from among its members a Political Committee and such additional secretaries and such departments and committees as may be considered necessary for most efficient work. The Political Committee is charged with the responsibility of carrying out the decisions and the work of the National Committee between its full sessions. It is responsible for all its decisions to the National Committee. The size of the Political Committee shall be decided upon by majority vote of the National Committee.

Members of the Political Committee and Editors of the Central Party organs must have been active members of the Party for not less than five years.

The National Committee shall meet at least once in four months.

The Political Committee of the National Committee shall meet weekly.

The National Committee may, when it deems it necessary, call Party conferences. The National Committee shall have full power to decide on the basis of attendance at such Conferences. Such Conferences shall be consultative bodies auxiliary to the National Committee.

Article IX

National Control Commission

Section 1. For the purpose of maintaining and strengthening Party unity and discipline, and of supervising the audits of the financial books and records of the National Committee of the Party and its enterprises, the National Committee elects a National Control Commission, consisting of the most exemplary Party members, each of whom shall have been an active Party member for at least five years. The size of the National Control Commission shall be determined by the National Committee.

Section 2. On various disciplinary cases, such as violation of Party unity, discipline and ethics, or concerning lack of class vigilance and Communist firmness in facing the class enemy, or spies, swindlers, double-dealers and other agents of the class enemy—the National Control Commission shall be charged with making investigations and decisions, either on appeals against the decisions of lower Party bodies, or on cases which are referred to it by the National Committee, or [11A] which the National Control Commission itself deems necessary to take up directly.

Section 3. The decisions of the National Control Commission shall go into effect as soon as their acceptance by the National Committee or its Political Committee is assured.

Section 4. Members of the National Control Commission shall have the right to participate in the sessions of the National Committee with voice but no vote.

Section 5. Meetings of the National Control Commission shall take place at least once every month.

Article X

Disciplinary Procedure

Section 1. Breaches of Party discipline by individual members, financial irregularities as well as any conduct or action detrimental to the Party's prestige and influence among the working masses and harmful to the best interests of the Party, may be punished by censure, public censure, removal from responsible posts, and by expulsion from the Party. Breaches of discipline by Party Committees may be punished by removal of the Committee by the next higher Party Committee, which shall then conduct new elections.

Section 2. Charges against individual members may be made by any person—Party or non-Party—in writing, to the Branches of the Party or to any leading committee. The Party Branch shall have the right to decide on any disciplinary measure, including expulsion. Such action is subject to final approval by the State Committee.

Section 3. The Section, State, and National Committees and the National Control Commission have the right to hear and take disciplinary action against any individual member or organization under their jurisdiction.

Section 4. All parties concerned shall have the fullest right to appear, to bring witnesses and to testify before the Party organization. The member punished shall have the right to appeal any disciplinary decision to the higher committees up to the National Convention of the Party.

Section 5. Party members found to be strike-breakers, degenerates, habitual drunkards, betrayers of Party confidence, provocateurs, advocates of terrorism and violence as a method of Party procedure, or members whose actions are detrimental to the Party and the working class, shall be summarily dismissed from positions of responsibility, expelled from the Party and exposed before the general public.

Article XI

Affiliation

The Communist Party of the U.S.A. is affiliated with its fraternal Communist Parties of other lands through the Communist International and participates in International Congresses, through its National Committee. Resolutions and decisions of International Congresses shall be considered and acted upon by the supreme authority of the Communist Party of the U.S.A., the National Conven-

tion, or between Conventions, by the National Committee.

Article XII

Amending the Constitution

Section 1. This Constitution and By-Laws may be amended as follows: (a) by decision of a majority of the present voting delegates at the National Convention, provided the proposed amendment has been published in the Party press or Discussion Bulletins of the National Committee at least thirty days prior to the Convention; (b) by the National Committee for the purpose of complying with any law of any state or of the United States or whenever any provisions of this Constitution and By-Laws conflict with any such law.

Section 2. Such amendments made by the National Committee shall be published in the Party press or Discussion Bulletins of the National Committee and shall remain in full force and effect until acted upon by the National Convention. Any amendment submitted by a State Committee or State Convention within the time provided for shall be printed in the Party press.

Article XIII

By-Laws

Section 1. By-Laws shall be adopted, based on this Constitution, for the purpose of establishing uniform rules and procedure of the proper functions of the Party organizations. By-Laws shall be

adopted or changed by majority vote of the National Convention, or between Conventions by majority vote of the National Committee.

Section 2. State By-Laws not in conflict with the National Constitution and By-Laws may be adopted or changed by majority vote of the State Convention or, between Conventions, by majority vote of the State Committee.

Article XIV

Charters

The National Committee shall issue Charters to State, or District Organizations and at the request of the respective State Organizations, to County and City Organizations, defining the territory over which they have jurisdiction and authority.

RULES AND BY-LAWS

The following are the Rules and By-Laws adopted by the Communist Party of the United States of America, in accordance with its Constitution, for the purpose of applying the Principles, Rights and Duties as established in the Constitution in a uniform manner in all Party Organizations.

Basic Organizations

The basic organizations of the Communist Party of the U.S.A. are the shop, territorial and industrial branches. A shop branch consists of those Party members who are employed in one place of employment. Shop branches shall be organized in every

factory, shop, mine, ship, dock, office, etc., where there is a sufficient number of Party members, but no less than seven.

A territorial branch consists of members of the Party living in the same neighborhood or territory. Territorial branches shall be organized on the basis of the political division of the city or town (assembly district, ward, precinct, election district, town or township, etc.).

Industrial branches may be organized and shall consist of Party members employed in the same trade or industry; they shall be composed of those Party members who are employed in places where shop branches have not yet been formed. Industrial branches shall organize shop branches wherever possible.

Every branch of the Party shall elect an Executive Committee, which shall consist of at least the following officers: chairman, treasurer, educational director, membership director. There may be a recording secretary whose functions may be filled bye one of the other officers. The size of the Executive Committee shall be determined by the size of the branch, but shall not be less than four.

The Executive Committee has the duty of preparing the agenda and proposals for the membership meeting, administering and executing the decisions of the membership and the higher Party committee, and, between branch meetings, of making decisions concerning matters which require immediate action.

The Executive Committee of the Branch shall report regularly on its work, which shall be subject to review and action by the membership.

Regular election of Branch officers shall take place at least yearly, but not more than twice a year. All officers shall be elected by majority vote of the membership at a specially notified meeting. Officers may be replaced by majority vote of the Branch membership at any time, with the approval of the higher Party committee.

Financial statements shall be submitted to the Branch by the Executive Committee at least quarterly.

The order of business at the Branch meeting shall include the following:

1. Reading of minutes of previous meeting;
2. Dues payments and initiation of new members.
3. Report of Executive Committee:
   a. Check-up on decisions (old business);
   b. Assignments and tasks, reports on communications, literature and press (new business);
4. Good and welfare;
5. Regular educational discussion (educational discussion may be moved to any point on the order of business).

Collections within Party organizations in a given territory can be made only with the approval of the next higher body.

One-third of the Branch membership shall constitute a quorum.

Branches shall meet at least once every two weeks.

Section Organizations

Delegates to the Section Convention or Council shall be elected by all Branches in proportion to their membership. The basis of representation shall be decided upon by the Section Committee in consultation with the higher Party Committee.

Any delegate to the Section Council may be recalled by a majority vote of his Branch. The Section Council meets regularly once a month.

The Section Council shall make a report at least once in three months to the general membership meeting of the Section. All Party members residing in the territory may be invited to these meetings.

The Section Council shall submit financial reports to the Branches and to the higher Party Committee, at least once in three months.

City or County Organizations

In cities where there is more than one Section Organization, a City Council may be formed by the election of delegates either from the Section Councils or directly from the Branches. The role of this form of organization is to coordinate and guide the work on a citywide scale, and actively participate in or supervise Party activity in all public elections and civic affairs within its territory.

The City Council elects from among its members a City Executive Committee with the same rights

and duties on a citywide scale as the Section Executive Committee has on a Statewide scale.

The State Committee has the right to form County Councils with the same rights and duties on a county scale as the City Council has on a city scale.

The structure of the County Organization shall be the same as of the City Council.

State or District Organizations

For two months prior to the Convention, discussion shall take place in all Party organizations on the main resolutions and problems coming before the State Convention. During this discussion, all Party organizations have the right and duty to adopt resolutions and amendments to the Draft Resolutions of the State Committee, for consideration at the Convention.

Only members who are at least two years in the Party can be eligible for elections to the State Committee. Exceptions can be made only by State or National Conventions. The size of the State Committee shall be decided upon by the Convention, in consultation with the National Committee.

The State Committee shall meet at least once in every two months. It shall elect from among its members an Executive Committee to function with full power, which shall be responsible to the State Committee.

The State Committee, by a majority vote of its members, may replace any regular member who is

unable to serve because of sickness or other assignment, or who is removed from office. New regular members shall be chosen from among the alternate members of the State Committee.

An auditing committee, elected by the State Committee, shall examine the books of the State Financial Secretary once every month. A certified Public Accountant shall audit these books at least once a year, and his report shall be presented to the State Committee and Conventions.

Special State Conventions may be called by a majority vote of the State Committee, or by the National Committee.

Upon the written request of Branches representing one-third of the membership of the State Organization, the State Committee shall call a special State Convention.

The call for a Special Convention shall be subject to the approval of the National Committee.

The State Committee shall have the power to establish an official organ with the approval of the National Committee.

The State Committee shall conduct or supervise Party activity in all public elections and statewide public affairs within the State.

In States having over one thousand members, the State Committee shall appoint a Disciplinary Committee with the task of hearing disciplinary cases, and reporting its findings and recommendations to the State Committee. In States with less than one thousand members, a Committee may be appointed if it is considered necessary.

Qualifications for Delegates to Conventions

Delegates to the State Conventions must be in good standing and have been members of the Party for at least one year.

Delegates to the National Convention must be in good standing and have been members of the Party for at least two years.

In special cases, the latter qualifications (length of time in Party) may be waived, but only with the approval of the leading committee involved (National Committee for the National Convention, State Committee for the State Convention).

Membership

It is within the provision of Article III, Section 1 of the Constitution that the following are eligible to membership in the Communist Party:

(a) Persons who, by some present unjust and undemocratic laws, are excluded from citizenship and disbarred from legally declaring their intentions of becoming citizens;

(b) Students and others temporarily residing in the country;

(c) All persons and workers coming from countries contiguous to the United States, engaged in migratory work, and temporarily in the country.

Rate of Dues

Dues shall be paid every month according to the following rates:

a. Housewives, unemployed and all members earning up to $47.00 a month, shall pay 10 cents a month.

b. All members earning from $47.01 to $80.00 a month inclusive, shall pay 25 cents a month.

c. All members earning from $80.01 to $112.00 a month inclusive, shall pay 50 cents a month.

d. All members earning from $112.01 to $160.00 a month inclusive, shall pay $1.00 a month.

e. Members earning more than $160.00 per month shall pay, besides the regular $1.00 dues, additional dues at the rate of 50 cents for each additional $10.00 or fraction thereof.

All dues payments must be acknowledged in the membership book by dues stamps, issued by the National Committee.

Transfers and Leaves of Absence

Members who move from one neighborhood to another and have to go from one Branch to another, shall obtain transfers from their Branches. No member shall be accepted by the new Branch without a properly filled out transfer card. Before receiving transfers, members shall be in good standing and pay up all other financial obligations to their Branches. If a member transfers from one Section or City Organization to another, a duplicate transfer card shall be transmitted through the State or District Committee. If a member transfers from

one State or District to another, this shall be recorded in the membership book, and a duplicate transfer card shall be sent through the National Committee.

No member has a right to take a leave of absence without the permission of his Branch. Leaves of absence not exceeding one month may be granted by the Branch. An extended leave of absence, upon the recommendation of the Branch, is acted upon by the next higher committee of the Party. Before a leave of absence is given the member shall pay up dues, and settle his financial obligations up to and including the end of the leave of absence period.

Readmittance

Expelled members applying for readmittance must submit a written statement and their applications may not be finally acted upon except with the approval of the National Control Commission.

Former members whose membership has lapsed must submit a written statement on application for readmission, to be finally acted upon by the respective State Committees.

Issued by

National Committee, Communist Party, U.S.A.
P.O. Box 87, Station D, New York City [11B]

[Endorsed]: Filed Sept. 22, 1939.

[Title of District Court and Cause.]

MEMORANDUM OPINION

Roche, District Judge:

The United States Government seeks to cancel the decree of naturalization and certificate of citizenship granted to the defendant, William Schneiderman, a native of Russia, by the United States District Court for the Southern District of California. (See 8 U. S. C. A. 405.)

The petition alleges that the defendant (1) illegally and (2) fraudulently obtained his citizenship status, contrary to the provisions of the Naturalization Act (8 U. S. C. A. 382), inasmuch as on June 10, 1927 and for the preceding five years, he did not behave as a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same, and on June 10, 1927 he concealed material facts from the District Court which awarded him his citizenship certificate. The Government further alleges that during the period of five years from 1922 to 1927, when defendant was on citizenship probation, he was a member of [12] certain organizations—the Young Workers League of America (which became the Young Workers Communist League of America in 1925), and the Workers Party of America—which were opposed to the principles of the Constitution and advocated the overthrow of the government by force and violence.

Defendant admits membership in the above

named organizations during the period in question, and admits belief in the principles of these organizations insofar as they followed the doctrines of Marx, Engels, Lenin and Stalin, but denies that the teachings of these men were incompatible with the principles of the Constitution. He denies that he has ever believed in, or has ever advocated, the use of force and violence for the overthrow of the government. He denies that he obtained his certificate of citizenship illegally or by fraud.

The question of canceling a citizenship certificate because of belief and behavior is discussed by the United States Circuit Court (3d) in the case of United States v. Tapolcsanyi (1930) 40 F. 2d 255. There, as in the case before this court, a Communist was dealt with by the Circuit Court which ruled that the views of the defendant were incompatible with the principles of the Constitution of the United States. Such views consisted of belief in the establishment of a communist state. Defendant admitted his determination to achieve communism in this country, but insisted that he believed in peaceful methods for accomplishing his ends, as provided in for the Constitution. In reply to this argument, which emphasized means rather than ends, the court declared:

> "While no one may be deeply attached to every provision of the Constitution and while all citizens have a right to work for its amendment in an orderly way, that is a right of a citizen. The respondent approached that right as an alien. As an alien he had no such right

> * * * Citizenship is a privilege—a civil status conferring rights and immunities. The respondent alien of course was free to apply for the privilege which the sovereign government might refuse altogether or might grant on such conditions as it should impose. In this instance it imposed upon the respondent the indispensable condition that he be attached to the principles of the Constitution."

Whereupon the court concluded that respondent was not so [13] attached to the Constitution of the United States, and that his citizenship certificate should be canceled.

Fundamental requirements of "attachment to the Constitution" are set forth explicitly in the case of In re Saralieff (1932) 59 F. 2d 436. There, the court denied an alien's petition for naturalization because he believed in, and advocated, a social order in which the three branches of the government would be replaced by a single group, called producers, in whom all power would rest. He wished to abolish private property and substitute therefor the ownership of property by a communist state. The court declared that such beliefs, which necessarily included elimination of our dual system of government and a cessation of present representative methods, were incompatible with attachment to the Constitution.[1]

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[1]But see United States v. Rovin (1926) 12 F. 2d 942; United States v. Ortner (1933) No. E 234—Phoenix, Ariz.; Strecker v. Kessler (1938) 95 F. 2d 976 (affirmed on different ground in 305 U. S. 587 (1939).

The purpose of communism has been held to be contrary to the principles of the Constitution in the Tapolcsanyi case and in the Saralieff case. The methods for attaining the communist goal have also been declared to be contrary to Constitutional principles, in the case of Branch v. Cahill (1937) 88 F. 2d 545 (9th Circuit), which held that communist organizations preach the use of force and violence to achieve their ends. In the Branch case, a ruling of the Department of Labor, in deportation proceedings commenced against an alien communist, was challenged. The court said: "There is ample evidence to show that the Communist Party advocates 'the overthrow by force and violence of the Government of the United States' ". Upon proof of the alien's membership in the Party and his belief in the principles of Communism, the court sustained the order of deportation. This decision is in accord with other deportation rulings in the Ninth Circuit.[2]

Since it has been held that belief in, and advocacy of, a communist state prevent an alien from being attached to the principles of the Constitution (In re Saralieff, above), [14] it follows that membership in, and subscription to the principles of, communist organizations—which are directly affiliated

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[2]Kenmotsu v. Nagle (1930) 44 F. 2d 953; Saksagansky v. Weedin (1931) 53 F. 2d 13; Ex parte Vilarino (1931) 50 F. 2d 582; Sormunon v. Nagle (1932) 59 F. 2d 399; Wolck v. Weedin (1932) 58 F. 2d 928.

with the Third Internationale—preclude attachment to the Constitution. Such membership not only gives rise to unconstitutional objectives (In re Saralieff, above), to be attained by unconstitutional means (Branch v. Cahill, above), but it also tends to make for divided allegiance between the United States of America and a world-wide Communist Society, with headquarters in Moscow, Russia.

In the case at bar, defendant has admitted membership in the Young Workers League of America (the Young Workers Communist League in 1925), and the Workers Party of America during his probationary period, and has admitted his continued membership in such organizations, which are affiliated with the Third Internationale and are now merged in the Communist Party. He has admitted that the two persons who acted as witnesses to his petition for naturalization were themselves Communists. He has been active in Party affairs and has written articles for the "Daily Worker", a Communist publication. He has expressed belief in the elimination of private property. He has admitted that he subscribes to the fundamental tenets of the Communist Party, and that he so subscribed during the five year period in which he was an applicant for citizenship.

The Government has placed in evidence many volumes of books and pamphlets which explain the doctrines of Marx, Engels, Lenin and Stalin, upon which the principles and practices of the Communist Party and its predecessor organizations are

based. It has also called upon three witneses, including defendant, to explain the position of the Communist Party and these predecessor organizations with respect to Communist ends and Communist means. The literature covers almost a century of economic and political thought, beginning with the publication of the Communist Manifesto in 1848. All of this printed material, together with the testimony of the [15] witnesses, may be examined for the purpose of shedding light on the period between 1922 and 1927, when defendant was on probation. In addition, the court may note defendant's conduct, as outlined above, in order to throw light on his state of mind during the probationary period.

The evidence before the court makes it clear that defendant's organizations sought to establish "the dictatorship of the proletariat", as a primary goal in a vague and indefinite program looking toward the eventual creation of a classless society. The evidence further discloses that methods of force and violence were, and are, accepted as necessary for the attainment of this "dictatorship of the proletariat". It would be difficult indeed to interpret (the many expressions set forth in the literature submitted in evidence), as indicating that the Communists expected to obtain their ends by peaceable means." (Kenmotsu v. Nagle (1930) 44 F. 2d 953, 955.)

The conclusion which this court reaches, after a careful reading of the writings placed in evidence and a review of the testimony of the several witnesses who appeared at the trial, is that the or-

ganizations to which defendant belonged were opposed to the principles of the Constitution and advised, taught and advocated the overthrow of the government by force and violence, and that defendant, by reason of his membership in such organizations and participation in their activities, was not "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same" (In re Saralieff, above). Therefore defendant obtained his certificate of citizenship illegally.

There is no merit to the defense of unconstitutionality of the naturalization law or in laches (United States v. Spohrer (1910) 175 F. 440, United States v. Ali (1925) 7 F. 2d 728, and United States v. Marino (1939) 27 F. Supp. 155). The Government has maintained the burden of proof in the present [16] proceeding (United States v. Rovin (1926) 12 F. 2d 942), by showing that defendant was not attached to the Constitution at the time he became a citizen. It is therefore ordered that the decree of naturalization and certificate of citizenship issued to the defendant be declared void and be set aside, upon preparation of findings of fact and conclusions of law by the Government.

Dated this 12th day of June, 1940.

MICHAEL J. ROCHE
United States District Judge

[Endorsed]: Filed Jun. 12, 1940. [17]

[Title of District Court.]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 12th day of June, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Michael J. Roche, District Judge.

[Title of Cause.]

This cause having been heretofore tried and submitted, being now fully considered, and the Court having filed its Memorandum Opinion thereon, it is, in accordance with said Memorandum Opinion, Ordered that the decree of naturalization and certificate of citizenship issued to the defendant be declared void and be set aside, and that a decree be entered herein accordingly upon findings of fact and conclusions of law to be prepared by the attorneys for the government. [18]

[Title of District Court and Cause.]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now comes the United States of America, by Frank J. Hennessy, United States Attorney for the Northern District of California, and submits its

proposed Findings of Fact and Conclusions of Law in the above captioned matter.

FRANK J. HENNESSY
United States Attorney

Dated: this 2nd day of July, 1940. [19]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

The Court finds that it is true that on the 10th day of June, 1927, the respondent, William Schneiderman, also known as Velvel Schneiderman, a native and former citizen of Russia, and a resident of the State of California, appeared before the United States District Court for the Southern District of California, Central Division, and by decree of said Court entered on the 10th day of June, 1927, was then and there admitted and declared to be a citizen of the United States of America, and a certificate of citizenship numbered 2608994 was thereupon issued to him by said Court as documentary [20] evidence of said naturalization.

II.

The Court finds that it is true that by virtue and under the color of said decree of naturalization said respondent has since the issuance of said decree of naturalization on the 10th day of June, 1927,

claimed to be a legally naturalized citizen of the United States and as such naturalized citizen entitled to all the rights, benefits, privileges, immunities and protection accorded naturalized citizens of the United States.

III.

The Court finds that it is true that before the filing of the complaint, an affidavit was executed by Robert N. Charles, Attorney for the Immigration and Naturalization Service, United States Department of Labor, showing good and sufficient cause for the institution of this proceeding as required by the provisions of Section 15 of the Act of Congress approved June 29, 1906.

IV.

The Court finds that it is true that said decree and certificate of naturalization were illegally procured and obtained in this: That respondent was not, at the time of his naturalization by said Court, and during the period of five years immediately preceding the filing of his petition for naturalization had not behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.

The Court finds that it is not true that at the time of the filing of his petition for naturalization respondent was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization [21] or body of persons

teaching disbelief in or opposed to organized government.

The Court finds that in truth and in fact during all of said times respondent had not behaved as a man attached to the principles of the Constitution of the United States and *will* disposed to the good order and happiness of the same, but was a member of and affiliated with and believed in and supported the principles of certain organizations known as the Workers Party of America, the Workers (Communist) Party of America, the Communist Party of the United States of America, the Young Workers League of America, the Young Workers (Communist) League of America and the Young Communist League of America, which organizations were, and each of them was, at all times herein mentioned, a section of the Third International, the principles of all of which said organizations were opposed to the principles of the Constitution of the United States, and advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence and taught disbelief in and opposition to organized government.

V.

The Court further finds that during all of said times the respondent has been and now is a member of said organizations and has continued to believe in, advocate and support the said principles of said organizations.

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VI.

The Court further finds that it is true that said decree and certificate of naturalization were fraudulently procured and obtained in this: That said respondent concealed from said United States District Court for the Southern District of California, Central Division, at [22] the time of said hearing of said petition for naturalization, the facts that at the time of filing said petition and at the time of said hearing and during the period of five years immediately preceding the filing of said petition he was a member of and affiliated with the Workers Party of America, the Workers (Communist) Party of America, the Communist Party of the United States of America, the Young Workers League of America, the Young Workers (Communist) League of America and the Young Communist League of America, which organizations were, and each of them was, at all times herein mentioned, a section of the Third International, and that during all of said times respondent believed in and supported the principles of said organizations and of the said Third International.

The Court further finds that it is true that by reason of said concealment said Court was deceived and misled and admitted respondent to citizenship and said concealment was material in this: That at all of said times the principles of said organizations and of the said Third International were opposed to the principles of the Constitution of the United States and advised, advocated and taught

the overthrow of the Government, Constitution and laws of the United States by force and violence and taught disbelief in and opposition to organized government.

VII.

The court further finds that it is true that said decree and certificate of naturalization were illegally and fraudulently procured and obtained in this: That before respondent was admitted to citizenship as aforesaid, he declared on oath in open court that he would support the Constitution of the United States, and that he absolutely and entirely renounced and abjured all allegiance and [23] fidelity to any foreign prince, potentate, state, or sovereignty, and that he would support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same, whereas in truth and in fact, at the time of making such declarations on oath in open court, respondent did not intend to support the Constitution of the United States, and did not intend absolutely and entirely to renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and did not intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and/or to bear true faith and allegiance to the same, but respondent at said time intended to and did maintain allegiance and fidelity to the Union of Soviet Socialist Republics and to the said Third International, and

intended to adhere to and support and defend and advocate the principles and teachings of said Third International, which principles and teachings were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence.

VIII.

The Court finds that it is true that at the time of the commencement of this proceeding respondent was a resident of the City and County of San Francisco, State of California, and within the jurisdiction of this Court and that his last known address was 121 Haight Street in the City and County of San Francisco, State of California. [24]

IX.

The Court finds that it is not true that respondent and the Communist Party of the United States of America believe in, advocate, teach or are committed to uphold the achievements of democracy or the rights of and to life, liberty and the pursuit of happiness or to defend the United States Constitution against all of its enemies.

CONCLUSIONS OF LAW

from the foregoing Findings of Fact:

The Court finds that the certificate of citizenship issued to William Schneiderman, also known as Velvel Schneiderman, by the United States District Court for the Southern District of California, Cen-

tral Division, by decree of said Court entered on the 10th day of June, 1927, admitting and declaring him to be a citizen of the United States of America, which said certificate of citizenship is numbered 2608994, was illegally procured and was procured by fraud and that said decree of naturalization and certificate of citizenship granted to said William Schneiderman, also known as Velvel Schneiderman, be set aside and cancelled and that the Clerk of this Court transmit a copy of this judgment to the United States District Court for the Southern District of California, Central Division, out of which such certificate of citizenship originally issued.

Dated: This 22nd day of July, 1940.

MICHAEL J. ROCHE
United States District Judge

[Endorsed]: Filed Jul. 22, 1940. [25]

In the Southern Division of the United States District Court for the Northern District of California

No. 21257-R

UNITED STATES OF AMERICA,

Petitioner,

vs.

WILLIAM SCHNEIDERMAN, also known as VELVEL SCHNEIDERMAN,

Respondent.

JUDGMENT AND DECREE

The above entitled cause having come on duly and regularly for trial on the 7th, 8th, 12th and 13th days of December, 1939, before the Court sitting without a jury, the respondent, William Schneiderman, also known as Velvel Schneiderman, appearing in person and by his attorney, George Andersen, Esquire, and the petitioner, the United States of America, appearing by its attorneys Frank J. Hennessy, United States Attorney for the Northern District of California, and Louis R. Mercado, Assistant United States Attorney for the said district, and evidence both oral and documentary having been introduced and the trial thereof having been duly and regularly continued to the 9th day of April, 1940, on which day the cause was submitted for final decision, and the Court having heretofore made and caused to be filed herein its

written findings of fact and conclusions of law and the Court being fully advised in the premises; [26]

Now, therefore, by reason of the law and the findings of fact aforesaid, it is and this Court hereby does order, adjudge and decree as follows:

That the said decree of naturalization of the United States District Court for the Southern District of California, Central Division, entered on the 10th day of June, 1927, admitting said respondent William Schneiderman, also known as Velvel Schneiderman, to American citizenship, be and the same is hereby vacated, revoked, set aside, canceled and declared null and void, and that the said certificate of citizenship No. 2608994 issued under said decree to said respondent, be, and the same is hereby revoked and canceled, and that said respondent be, and he is hereby directed and required to surrender up to this Court for cancelation the said certificate of citizenship No. 2608994, and the said Clerk of this Court is hereby ordered to cancel the said certificate of citizenship, and

That he, said respondent, as well as all others claiming by, through or under the decree of naturalization aforesaid be, and they each are hereby divested of their status of American citizenship illegally and fraudulently procured and obtained as aforesaid, and the respondent, as well as all others claiming American citizenship by, through or under his said naturalization as aforesaid, be, and they each are hereby forever restrained and enjoined from setting up, claiming or exercising any rights,

benefits, privileges, immunities or protection as citizens of the United States of America under said decree of naturalization, or said certificate of citizenship issued thereunder:

It is further ordered, adjudged and decreed that the Clerk of this Court under and pursuant to the provisions of Section 15 of the Act of Congress of June 29, 1906, [27] aforesaid, transmit a certified copy of this decree to the Clerk of the United States District Court for the Southern District of California, Central Division, and that the Clerk of this Court also transmit a certified copy of this decree, together with the canceled certificate of citizenship No. 2608994 to the Immigration and Naturalization Service of the United States Department of Labor at Washington, D. C.

Given under my hand and the seal of this Court this 23rd day of July, 1940.

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Jul. 23, 1940. [28]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the above entitled Court:

Notice is hereby given that William Schneiderman, respondent above named, appeals to the United States Circuit Court of Appeals for the Ninth Cir-

cuit, from the final judgment entered herein on the 23rd day of July, 1940.

Dated: July 29th, 1940.

ANDERSEN & RESNER,
Attorneys for Respondent.

[Endorsed]: Filed Jul. 29, 1940. [29]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

The Respondent and Appellant herein sets forth the points upon which he intends to and does rely in the consideration of his appeal:

1. Insufficiency of the evidence to show or prove any actionable fraud on the part of Appellant at the time of his naturalization.

2. Insufficiency of the evidence to show or prove any illegality on the part of Appellant in the naturalization proceeding in which appellant was granted citizenship.

3. Insufficiency of the evidence to show or prove that either Respondent, or any organization with which he was associated, or of which he was a member, believed in the overthrow of the government by force or violence, or advocated or taught such principles.

4. Insufficiency of the evidence to show or prove that Appellant, at the times mentioned in the complaint, disbelieved in organized government.

5. Insufficiency of the evidence to show or prove

that Appellant, at the time of his naturalization was not, and had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.

6. That the Fourth Finding of Fact is not supported by the evidence.

7. That the Sixth Finding of Fact is not supported by the evidence. [30]

8. That the Seventh Finding of Fact is not supported by the evidence.

9. That the Ninth Finding of Fact is not supported by the evidence.

10. That the statutes under which this proceeding was instituted are unconstitutional, and are unconstitutional as applied to Appellant insofar as they may attempt to restrict and abridge the right of Appellant to freely speak and to have freedom of thought and belief, and as denying Appellant the equal protection of the laws, within the meaning of the First and Fifth Amendments to the United States Constitution.

11. That as such statutes are applied to Appellant they are unconstitutional in that the word "behavior" is not defined and has been unconstitutionally applied to Appellant.

Dated: August 15th, 1940.

ANDERSEN & RESNER,
Attorneys for
Respondent and Appellant.

[Endorsed]: Filed Aug. 23, 1940. [31]

[Title of District Court and Cause.]

REQUEST FOR AND DESIGNATION OF RECORD

To the Clerk of the above entitled Court:

Respondent and Appellant herein files herewith his request for and designation of those portions of the record, proceedings, and evidence to be contained in the record on appeal herein and to be docketed in the Circuit Court of Appeals.

Appellant herein requests and designates for inclusion in said record the following portions of said record:

1. Government's petition.
2. Answer thereto.
3. One copy of all exhibits in evidence or offered for identification.
4. All excerpts from various pamphlets offered as exhibits.
5. Findings of Fact and Conclusions of Law.
6. Opinion of Judge Roche.
7. Judgment rendered.
8. The complete transcript of the testimony of the witnesses William Schneiderman, Miles Humphries, William Hynes, and Professors Brown and Thompson, eliminating from the transcript of the testimony all arguments and motions.

Dated: August 5th, 1940.

ANDERSEN & RESNER,
Attorneys for
Respondent and Appellant.

[Endorsed]: Filed Aug. 23, 1940. [32]

[Title of District Court and Cause.]

ORDER AUTHORIZING FILING OF ORIGINAL EXHIBITS IN CIRCUIT COURT

Good cause appearing to me therefor:

It is hereby ordered that the Clerk of the above entitled Court transmit to and deposit with the Clerk of the United States Circuit Court of Appeals all original exhibits introduced in evidence or for identification in the trial of the above entitled matter.

Done in open court this 23rd day of August, 1940.

MICHAEL J. ROCHE,
Judge of the District Court.

[Endorsed]: Filed Aug. 23, 1940. [33]

[Title of District Court and Cause.]

ORDER

Good cause appearing to me therefor:

It is hereby ordered that the time for docketing the appeal in the above entitled matter in the office of the Clerk of the Circuit Court of Appeals is hereby extended for a period of thirty days from the date hereof.

Done in open court this 7th day of September, 1940.

MICHAEL J. ROCHE,
Judge of the District Court.

[Endorsed]: Filed Sep. 7, 1940. [34]

District Court of the United States, Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 1-34 pages, numbered from 1 to 34, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case entitled United States of America vs. William Schneiderman, also known as Velvel Schneiderman, No. 21257-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of seventeen dollars & 55/100 ($17.55) and that the said amount has been paid to me by the Attorney for the appellant herein.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 20th day of September, A. D. 1940.

(Seal) WALTER B. MALING,
Clerk.

WM. J. CROSBY,
Deputy Clerk. [35]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

Thursday, December 7, 1939

Appearances

For the United States of America:
FRANK J. HENNESSY, Esq.,
United States Attorney;
LOUIS R. MERCADO, Esq.,
Assistant United States Attorney.

For the Respondent:
GEORGE R. ANDERSEN, Esq.,
and
ROBERT WALKER KENNY, Esq. [37]

Thursday, December 7, 1939

Mr. Andersen: Before we proceed, might I request that Robert Walker Kenny appear as counsel for the defendant?

The Court: The record may so show.

Mr. Hennessy: May it please the Court, this is a suit to set aside and cancel a certificate of citizenship issued to William Schneiderman, also known as Velvel Schneiderman, by the United States District Court for the Southern District of California, Central Division, on June 10, 1927, upon the ground of fraud and that it was illegally procured.

The proceeding is brought under Section 405 of Title 8 of the United States Code Annotated, which provides that:

"It shall be the duty of the United States District Attorney for the respective districts, or the Commissioner or Deputy Commissioner of Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured."

The bill of the complaint in this case alleges in paragraph I the issuance of the certificate of citizenship. It alleges that:

"On the 10th day of June, 1927, the respondent, William Schneiderman, also known as Velvel Schneiderman, a native and former citizen of Russia, and a resident of the State of California, appeared before the United States District Court for the Southern District of California, Central Division, and by decree of said Court entered on the 10th day of June, 1927, was then and there admitted and declared to be a citizen of the United States of America, and a certificate of citizenship numbered [38] 2608994 was thereupon issued to him by said court as documentary evidence of said naturalization."

That allegation is admitted in the answer.

The second paragraph of the complaint alleges:

> "That by virtue and under the color of said decree of naturalization of William Schneiderman, also known as Velvel Schneiderman, as well as said certificate of citizenship No. 2608994, issued under and pursuant thereto, and not otherwise, said respondent claims to be a legally naturalized citizen of the United States, and as such naturalized citizen entitled to all the rights, benefits, privileges, immunities and protection accorded naturalized citizens of the United States."

That allegation is also admitted in the answer of the respondent.

The third paragraph of the complaint alleges:

> "That before the filing of this complaint, affidavit was executed by Robert M. Charles, attorney for the Immigration and Naturalization Service, United States Department of Labor, showing good and sufficient cause for the institution of this proceeding as required by the provisions of section 15 of the aforesaid act of Congress of June 29, 1906, which affidavit is hereto attached, marked Exhibit 'A' and made a part hereof the same as if set forth herein."

That allegation is denied on lack of information or belief on the subject.

The fourth paragraph of the complaint, which is denied in the answer, alleges:

"That said decree and certificate of naturalization were illegally procured and obtained in this: that respondent was not, at the time of his naturalization by said court, and during the period of five years immediately preceding the filing of his petition for naturalization respondent had not behaved as, a [39] person attached to the principles of the Constitution of the United States and well-disposed to the good order and happiness of the United States, but in truth and in fact during all of said times respondent was a member of and affiliated with and believed in and supported the principles of certain organizations then known as the Workers (Communist) Party of America and the Young Workers (Communist) League of America, whose principles were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence."

In the denial of this allegation, the answer admits that, at the time and place alleged in said paragraph, the respondent was a member of the Communist Party of the United States of America. With the exception of that admission, the other allegations of that paragraph IV are denied.

The fifth paragraph of the complaint alleges:

"That at all times subsequent to the entry

of said decree of naturalization respondent has continued to be, and now is, a member of and affiliated with organizations, to-wit: the Workers (Communist) Party of America and the Young Workers (Communist) League of America and the Communist Party of the United States and the Young Communist League of the United States, whose principles are opposed to the principles of the Constitution of the United States and advise, advocate and teach the overthrow of the Government, Constitution and laws of the United States by force and violence, and during all of said times respondent has continued to believe in and support said principles of said organizations."

This allegation in the complaint is denied in the answer, with the exception that there is an admission, as follows: [40]

"Save and except that this respondent admits that at all times subsequent to the entry of said decree of naturalization respondent has continued to be and now is a member of the Communist Party of the United States of America."

The sixth allegation of the complaint, which is denied in the answer, is as follows:

"That said decree and certificate of naturalization were fraudulently procured and obtained in this: That respondent concealed from said

United States District Court for the Southern District of California, Central Division, at the time of said hearing of said petition for naturalization, the facts that at the time of filing said petition and at the time of said hearing and during the period of five years immediately preceding the filing of said petition he was a member of and affiliated with certain organizations which were then known as the Workers (Communist) Party of America and the Young Workers (Communist) League of America, and that during all said times he believed in and supported the principles of said organizations as aforesaid, and by reason of this concealment said Court was deceived and admitted respondent to citizenship, and said concealment was material in this: That at all times herein mentioned the principles of said organizations were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence."

The denial contained in paragraph VI of the answer is as follows:

"Replying to paragraph VI of said complaint, respondent denies each and every, all and singular, generally and specifically, the allegations therein contained; and in particular this respondent denies that at any time during

which said respondent was a member of said organization that said organization, or the [41] principles of said organization, or the tenets of said organization, or the teachings of said organization, or the belief of said organization, or either of them, were opposed or contrary to the principles of the Constitution of the United States of America; and specifically denies that either said respondent or said organization advised or advises, advocated or advocates, taught or teaches, the overthrow of the Government, or the Constitution, or the laws, or the Government, Constitution and laws of the United States of America by force and violence or force or violence."

Paragraph VII of the complaint is admitted in the answer, and is to the effect:

"That respondent now resides in the City and County of San Francisco, State of California, and within the jurisdiction of this court, the last known address of respondent being 121 Haight Street in said city, county and state."

In addition to the denials to which I have directed your Honor's attention, there is a separate and distinct defense set forth in the answer, which is as follows:

"And as and for a separate, further and distinct defense to said complaint, and the alleged cause of action therein purportedly stated, re-

spondent denies that at any time during which he was a member of said Communist Party of the United States of America, that said organization believed in, taught, or advocated the overthrow of the Government of the United States of America, its Constitution, or its laws; and specifically denies that during said time the said Communist Party of the United States advised, advocated, or taught the overthrow of the Government of the United States, its Constitution and laws, or said Government, Constitution or laws, by force and violence, or force or violence, or by any other manner, or at all.

"And in this connection, respondent alleges that respondent [42] and the said Communist Party of the United States of America believes in, advocates, teaches, and is committed to uphold the achievements of democracy and the rights of and to, life, liberty, and the pursuit of happiness; and to defend the United States Constitution against all of its enemies.

"And as and for a further, separate and distinct defense to said complaint on file herein, respondent attaches hereto and makes a part hereof as though set out in haec verba, a copy of the Constitution of the Communist Party of of the United States of America, which is marked Exhibit 'A', and alleges that the aims, purposes and objects of said Constitution sets forth the aims, purposes, objects, beliefs, advocacies and teachings of said organization dur-

ing all of the times alleged in said complaint on file herein."

We expect to show, may it please your Honor, that, prior to the filing of the declaration of intention by Mr. Schneiderman for citizenship and at the time of the filing of the declaration of intention and at the time of the filing of his petition for citizenship and at the time of his admission to citizenship and at all times subsequent to his admission to citizenship and up to the present time, he has advocated principles that are at variance with the principles of our Government, and the tenets of our Constitution; and that he was not, at the time he was admitted to citizenship and during the probationary period of five years anterior thereto, attached to the principles of our Constitution; and that he was a member of societies during this period and since his admission as a citizen has been a member of societies that teach doctrines entirely at variance with our Constitution; that these societies teach and endeavor to further the establishment of a worldwide Communist Society, the abolition of property, the wiping out of all classes, the establishment of a dictatorship of the [43] proletariat,—that is, a dictatorship of workers,—of removal of all capitalistic governments—and, among the capitalistic governments, they designate the United States of America; and the establishment ultimately of this utopian communist society, in which there shall be no private property and no

classes, and everything shall be possessed in common, and all persons shall be workers.

We believe that the advocating and believing in those tenets are at variance with the tenets and principles of our Constitution and our Government, and that a person who believes in those things is not attached to the Constitution of the United States; he did not believe in private property; he did not believe in our system of Government; but he believed in the overthrow of our system of government, whether by force or otherwise; and we believe we can establish that it was by force.

After we show that he was not attached to the principles of the Constitution of the United States when he obtained his citizenship, he was not entitled to his citizenship. In order to obtain citizenship, one must comply with the requirements of Congress; he must be attached and prove that he was attached, during the probationary period of five years prior to the issuance of the certificate of citizenship, to the principles of the Constitution of the United States and was not a disbeliever in organized government.

We believe that we can establish these facts by the activities of Mr. Schneiderman, both prior to the time of his admission and subsequent to his admission to citizenship. We believe we can establish them, also, by the principles, the platforms, propaganda of the organizations of which he was a member and an official, and to which he subscribed during all this period of time.

I offer in evidence at this time, may it please the Court, the declaration of intention.

(Document marked "Government's Exhibit No. 1.") [44]

U. S. EXHIBIT NO. 1

246; form 2203 U. S. Department of Labor, Naturalization Service;

Duplicate [to be forwarded to the Bureau of Naturalization]

No. 26427.

United States of America;

DECLARATION OF INTENTION

Invalid for all purposes seven years after the date hereof.

United States of America,
Southern District of California,
County of Los Angeles—ss.

In the District Court of the
United States.

I, Velvel Schneiderman, aged 18 years, occupation Student, do declare on oath that my personal description is: Color, white; Complexion, light; Height, 5 feet 10 inches; Weight, 130 pounds; Color of Hair, auburn; Color of Eyes, green; other visible distinctive marks, none. I was born in Rumonov, Russia, on the 1st day of August, anno Domini 1905; I now reside at 2755 Winter St., Los Angeles, California. I emigrated to the United States of America from Antwerp, Belgium, on the vessel Kroonland; my last foreign residence was

Rumonov, Russia; I am not married; the name of my wife is (blank); she was born at (blank); and now resides at (blank).

It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the present Government of Russia, of whom I am now a subject; I arrived at the port of New York, in the State of New York, on or about the 1st day of September, anno Domini 1907; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it my intention in good faith to become a citizen of the United States of America and to permanently reside therein: So help me God.

VELVEL SCHNEIDERMAN
(Original signature of declarant)

Subscribed and sworn to before me in the office of the [45] Clerk of said court at Los Angeles, Cal., this 8th day of Feb. anno Domini 1924.

[Seal] CHAS. N. WILLIAMS,
Clerk of the U. S. District Court, Southern District of California,
By M. M. HANSEN,
Deputy Clerk.

[Endorsed]: U. S. Ex. No. 1. Filed Dec. 7, 1939. Walter B. Maling, Clerk. B. J. A. Schaertzer, Deputy Clerk.]

Mr. Hennessy: I ask that it be marked Government's Exhibit 1.

The Court: It may be admitted and marked.

Mr. Hennessy: I desire to offer in evidence at this time, may it please the Court, the petition of Mr. Schneiderman for naturalization.

The Court: It may be admitted and marked.

(The document was marked

"U. S. EXHIBIT NO. 2,"

and is in words and figures as follow, to-wit:

"Form 2204-L; U. S. Department of Labor, Naturalization Service. Duplicate [to be forwarded to the Bureau of Naturalization].

No. 18758.

United States of America;

PETITION OF NATURALIZATION.

To the Honorable the District Court of the United States at Los Angeles, California.

The petition of Velvel Schneiderman, hereby filed, respectfully showeth: First: My place of residence is 2755½ Winter Street, Los Angeles, California. Second: My occupation is Clerk. Third: I was born on the 1st day of August, anno Domini 1905, at Rumanov, Russia. Fourth: I emigrated to the United States from Antwerp, Belgium, on or about the 12th day of September anno Domini 1908, and arrived in the United States, at the port of New York, N. Y., on the 22nd day of September anno Domini 1908, on the vessel 'Kroonland'. Fifth:

I declared my intention to become a citizen of the United States on the 8th day of February, anno Domini 1924 at Los Angeles, California, in the District Court of the United States. Sixth: I am not married. I have no children. Seventh: I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. [46] I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the State of Russia, of whom at this time I am a subject, and it is my intention to reside permanently in the United States. Eighth: I am able to speak the English language. Ninth: I have resided continuously in the United States of America for the term of five years at least immediately preceding the date of this petition, to wit, since the 22nd day of September, anno Domini 1908, and in the State of California continuously next preceding the date of this petition, since the 19th day of September, anno Domini 1919, being a residence within this State of at least one year next preceding the date of this petition. Tenth: I have not heretofore

made petition for citizenship to any court.

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of Labor, together with my affidavit and the affidavits of the two verifying witnesses thereto, required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America, and that his name be changed to William Schneiderman.

VELVEL SCHENIDERMAN

(Complete and true signature of petitioner)

Declaration of Intention No. 26427 and Certificate of Arrival from Department of Labor filed this 18th day of January, 1927.

Note to Clerk of Court: If petitioner arrived in the United States on or before June 29, 1906, strike out the words reading "and Certificate of Arrival from Department of Labor."

[47]

AFFIDAVITS OF PETITIONER AND WITNESSES

The aforesaid petitioner being duly sworn, deposes and says that he is the petitioner in the above-entitled proceedings; that he has read the foregoing petition and knows the contents thereof; that the said petition is signed with his full, true name; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it

to be true.

VELVEL SCHNEIDERMAN
(Complete and true signature of petitioner.)

Albert J. Bock; occupation, Business Agent, residing at 2420 Brooklyn Av., L. A., Cal., and (Miss) Minnie Karasick, occupation, at home, residing at 2728 Folsom St., Los Angeles, Cal., each being severally duly and respectively sworn, deposes and says that he is a citizen of the United States of America, that he has personally known Velvel Schneiderman, the petitioner above mentioned, to have resided in the United States continuously immediately preceding the date of filing his petition, since the 17th day of January, anno Domini 1922, and in the State in which the above-entitled petition is made continuously since the 17th day of January, anno Domini 1922; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that the petitioner is in every way qualified, in his opinion, to be admitted a citizen of the United States.

ALBERT J. BOCK
(signature of witness)
MINNIE KARASICK
(signature of witness)

Subscribed and sworn to before me by the above-named petitioner and witnesses in the

office of the Clerk of said Court this 18th day of January, anno Domini 1927.

(Seal) R. S. ZIMMERMAN,
Clerk
By GEO. A. CUPERICH,
Deputy Clerk.")

[Endorsed]: U. S. Ex. No. 2. Filed Dec. 7, 1939. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [48]

Mr. Hennessy: I desire to offer at this time the certificate of naturalization.

The Court: It may be admitted and marked.

(Document marked "U. S. Exhibit No. 3.")

Mr. Hennessy:

"U. S. EXHIBIT NO. 3.

The United States of America.

No. 2608994.

CERTIFICATE OF NATURALIZATION

Petition, Volume 177, Number 18758. Description of holder: age, 21 years; height, 5 feet, 10 inches; color, white; complexion, light; color of eyes, green; color of hair, auburn; visible distinguishing marks, none.

WILLIAM SCHNEIDERMAN
(Signature of Holder)

Duplicate.

United States of America,
Southern District of California,
County of Los Angeles—ss.

Be it remembered that William Schneider-

man (formerly Velvel Schneiderman), then residing at number 2755½ Winter Street, City of Los Angeles, State of California, who previous to his naturalization was a citizen of Russia, having applied to be admitted a citizen of the United States of America pursuant to law, and at a stated term of the District Court of the United States, held at Los Angeles, on the 10th day of June, in the year of our Lord nineteen hundred and 27, the court having found that the petitioner intends to reside permanently in the United States, and that he had in all respects complied with the Naturalization Laws of the United States, and that he was entitled to be so admitted, it was thereupon ordered by the said court that he be admitted as a citizen of the United States of America.

In testimony whereof the seal of said court is hereunto affixed on the 10th day of June, in the year of our Lord nineteen hundred and 27, and of our Independence the one hundred and fifty-first.

[Seal] R. S. ZIMMERMAN,
Clerk, U. S. District Court,
Southern District of
California,
By LIZZIE F. HIMEON,
Deputy (Official character
of attestor.)"

[Endorsed]: U. S. Ex. No. 3. Filed Dec. 7, 1939. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy. [49]

I desire to offer in evidence at this time, may it please the Court, the affidavit of Robert M. Charles, attached to the complaint, as the answer denies, on lack of information and belief, the execution of this affidavit.

Mr. Andersen: I wish to object to the introduction of this affidavit. It is true that the statute says that the complaint shall only issue upon the filing of an affidavit; but, so far as this proceeding is concerned, the affidavit remains merely hearsay, as far as this defendant is concerned. I believe the affidavit, when introduced in evidence, would be improper for that reason, and for the very reason that the testimony could be given in open court, where cross-examination would be available to the defendant.

Mr. Hennessy: The affidavit is not offered to prove the facts set forth in the affidavit, but to prove the execution of this affidavit, which is provided by the statute.

Mr. Andersen: We have no objection, for that limited purpose.

Mr. Hennessy: The execution of his affidavit is provided by the statute. I might state that the authorities hold that this proceeding may be maintained even without the execution of an affidavit.

The Court: You may read it.

Mr. Hennessy: I would ask that this affidavit be marked Exhibit 4. It is attached to the complaint, —the original affidavit. The statute provides, may it please your Honor, that:

"It shall be the duty of the United States District Attorney, upon affidavit showing good cause therefor, to institute proceedings."

And they have denied the execution of this affidavit; and, for that purpose, we are offering it in evidence.

(Affidavit marked

"GOVERNMENT'S EXHIBIT NO. 4.") [50]

Mr. Hennessy:

"EXHIBIT 'A' 246; C-2608994

"United States of America,
District of Columbia—ss.

"Robert M. Charles, being duly sworn, deposes and says:

"1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Labor, and as such has access to the official records of said Service, from which the following facts appear:

"2. That William Schneiderman, then known as Velvel Schneiderman, a native and then a subject of Russia, made declaration of intention No. 26427 on February 8, 1924, in the U. S. District Court at Los Angeles, California, in the name of Velvel Schneiderman, filed petition for naturalization, No. 18758 in the same court on January 18, 1927, at which time he requested that his name be changed to William Schneiderman, and he was admitted to citizenship on

June 10, 1927, certificate of naturalization No. 2608994 being issued to him on the latter date in the name of William Schneiderman;

"3. That the said William Schneiderman stated under oath in said petition for naturalization that he was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government; also, he stated therein that he was attached to the principles of the Constitution of the United States; that the said petition for naturalization was verified by the joint affidavit of one Albert J. Bock and one Minnie Karasick, each of whom stated that he/she had personal knowledge that the said petitioner was a person of good moral character, attached to the principles of the Constitution of the United States and in every way qualified in affiant's opinion, to be admitted a citizen of the United States; and, that before he was admitted to citizenship the said William Schneiderman declared on oath in open court that he would [51] support the Constitution of the United States, and that he would support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same;

"4. That in truth and in fact during the five years immediately preceding the filing of

his said petition for naturalization, and from the date of said petition to the time of his admission to citizenship, the said William Schneiderman did not behave as a person attached to the principles of the Constitution of the United States, and he was not attached to such principles, but during said five-year period, and thereafter he was a member of an organization, to wit: the Workers (Communist) Party of America, which organization is opposed to the Government of the United States, and teaches and advocates the overthrow of the Government of the United States by force and violence;

"5. That the naturalization of the said William Schneiderman was fraudulently and illegally procured in violation of the third and fourth subdivisions of Section 4 of the Naturalization Act of June 29, 1906 (34 Stat. 596; U. S. C. t.8, secs. 381 and 382), in that:

"(a) At the time of filing his petition for naturalization and at the time of his admission to citizenship he was not attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same, and during the five-year period immediately preceding the filing of his petition for naturalization he had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same; and

"(b) At the time he took said oath of allegiance, he did not in fact intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and [52] bear true faith and allegiance to the same.

"6. That good cause exists for the institution of a suit under Section 15 of the said 1906 Act, supra. (34 Stat. 601; U. S. C., 6. 8, sec. 405), to set aside and cancel the certificate of naturalization of the said William Schneiderman as having been fraudulently and illegally procured;

"7. That the last known place of residence of the said William Schneiderman is San Francisco, California.

"(Signed) ROBERT M. CHARLES.

"Subscribed and sworn to before me, a Notary Public of the District of Columbia, this 20th day of June, 1939.

"(Signed) J. LOUIS BIXLER,
Notary Public, District of Columbia.

"Commission expires September 8, 1939."

I desire to offer in evidence at this time, may it please your Honor, and have it marked as Government's Exhibit 5, "The Constitution and By-laws of the Communist Party of The United States of America, Adopted by the Tenth National Convention of The Communist Party of the United States

of America, in New York, May 27 to 31, 1938." It is attached as an exhibit to the answer of the defendant. It may be considered read, or do you desire to have it read into the record?

Mr. Andersen: It may be considered read.

Mr. Hennessy: We will direct your Honor's attention to certain portions of this constitution at a later date. I would like at this time, however, to call your Honor's attention to a couple of portions of it. I call your Honor's attention to the preamble, the second paragraph:

> "By establishing common ownership of the national economy, through a government of the people, by the people, and for the people; the abolition of all exploitation of man by man, nation by nation, and race by race, and thereby the abolition of class [53] divisions of society; that is, by the establishment of Socialism, according to the scientific principles enunciated by the greatest teachers of mankind, Marx, Engles, Lenin and Stalin, embodied in the Communist International; and the free cooperation of the American people with those of other lands, striving toward rule without oppression and war, a world brotherhood of man."

I wish also to direct your Honor's attention to the second article:

> "Emblem. The emblem of the party shall be the crossed hammer and sickle, representing the unity of worker and farmer——"

Mr. Andersen: (Interrupting) I think you should read the whole document.

Mr. Hennessy: All right, I will read the whole document (reading).

[Printer's Note: Set forth as an exhibit to the answer at page 14 of this printed record.]

WILLIAM SCHNEIDERMAN,

called for the United States; sworn.

Direct Examination

Mr. Hennessy: Q. Mr. Schneiderman, you are the defendant in this proceeding? A. Yes.

Q. Where do you live?

A. 380 Eddy Street.

Q. San Francisco? A. Yes.

Q. You formerly lived in Los Angeles, did you, Mr. Schneiderman? A. Yes.

Q. When did you take up a residence in Los Angeles? A. About 1919.

Q. At that time, were you attending school?

A. Yes.

Q. What school were you attending?

A. Los Angeles High School.

Q. Did you ever affiliate yourself with the Young Workers' League in Los Angeles while you were there? A. Yes.

Q. When did you first join the Young Workers' League? A. In 1922.

Q. At that time, were you attending high school? A. I believe so, yes. [54]

(Testimony of William Schneiderman.)

Q. What high school were you attending?

A. I think it was the Polytechnic Night School.

Q. Los Angeles Polytechnic?

A. Night school.

Q. Were you one of the organizers of the Young Workers' League of California? A. Yes, sir.

Q. One of the charter members? A. Yes.

Q. That was in 1922? A. Yes.

Q. Did you hold any office in the Young Workers' League?

A. At that time, I believe I was educational director.

Q. What were your functions or duties as educational director in the Young Workers' League?

A. To organize forums and studies for classes.

Q. You maintained classes at that time in the Young Workers' League?

A. I did not teach them. I just organized them.

Q. You organized them? A. Yes.

Q. Those study classes were for what purpose?

A. For the purpose of studying the theory of Marxism and the political and economic situation in the countries.

Q. Those classes were attended by prospective members of the Young Workers' League?

A. No; they were open to anybody.

Q. They were open to any person who desired to come in? A. Yes.

Q. Did you teach in any of those classes?

A. No.

(Testimony of William Schneiderman.)

Q. There were other members of the Young Workers' League who taught?

A. I really do not recall who were the teachers. They were probably Workers or members of the Workers' Party.

Q. This education program of your Young Workers' League was directed by whom—that is, the outlines of their curriculum were set forth by whom?

A. By the National Committee of the Young Workers' League.

Q. Where did the National Committee of the Young Workers' League have their headquarters?

A. New York. [55]

Q. They were selected, were they, by the National Convention?

A. Pardon me; I believe at that time their headquarters were in Chicago.

Q. The National Committee of the International Workers' League was selected, I assume, by the National Convention of the Young Workers' League? A. That is right.

Q. How long did you continue as educational director of the Young Workers' League?

A. Oh, I should say, two or three years.

Q. In teaching the philosophy of the League, what books or pamphlets did you use?

A. The generally accepted writings of Marx and Lenin.

Q. Will you enumerate those, as well as you remember them?

(Testimony of William Schneiderman.)

A. Well, I could easily get you a list of them; but, as I recall, they were from the collected or selected works of Marx and Lenin.

Q. Did you use the "Communist Manifesto" of Marx? A. Yes.

Q. Did you use the "State and Revolution" of Lenin? A. Probably. I do not recall.

Q. Did you use "Left Wing Communism," of Lenin? A. Yes.

Q. Did you use the "Theory and Practice of Leninism," by I. Stalin?

A. I do not recall. I do not think it was written at that time.

Q. Probably you are correct about that. Do you remember whether the book, "White Communism," had been written at that time?

A. No; it had not been.

Q. Had the "A. B. C. of Communism" been written at that time? A. I don't recall.

Q. How long did you continue to be educational director of the Young Workers' League?

A. I believe, for two or three years.

Q. It was a nonsalaried position, I assume?

A. Yes.

Q. Now, was the Young Workers' League limited to persons under a certain age?

A. I think, at that time, that the age limit was between 16 and 25. [56]

Q. Was the name of the Young Workers' League subsequently changed to the Young Communist League?

(Testimony of William Schneiderman.)

A. First it was changed to the Young Workers' Communist League, and later to the Young Communist League.

Q. It was the same organization; just a change in name; is that correct? A. Yes.

Q. Have you continued your affiliation with the Young Workers' League up to the present time?

A. No; I was a member until about 1929 or 1930.

Q. Was the Young Workers' League affiliated with the International Young Workers' League?

A. It was affiliated with the International—Communist International.

Q. Where was the headquarters of the Young Communist International?

A. It was formed in Berlin; and the headquarters were moved to Moscow.

Q. You stated it was affiliated with the Young Communist International. Just what did that affiliation consist of?

A. I believe, at that time the status was that of fraternal affiliation. It required the consent of the electors of the International Congress.

Q. Did the Young Workers' League send delegates to the Congress of Young Workers' International? A. I believe so.

Q. Did you ever attend any of those Congresses?

A. No.

Q. Did you ever occupy any other position with the Young Workers' League other than educational director?

(Testimony of William Schneiderman.)

A. Yes; later I became organizer; I believe it was 1928.

Q. What were your duties as organizer?

A. I was the director of the Young Workers' League.

Q. As director, what were your functions?

A. The usual functions of an executive officer; I was the official spokesman for the League and directed its administrative and political affairs and educational affairs. [57]

Q. Was that a salaried position? A. No.

Q. Then, in 1927, when you were granted your citizenship papers, you were educational director of the Young Communist League?

A. I do not think that, at that time, I held any official position.

Q. You were a member of it?

A. I was a member.

Q. Were you a member, at any time, of the Workers' Party? A. Yes.

Q. When did you join the Workers' Party?

A. I believe it was either the end of 1924 or the beginning of 1925.

Q. Where did you join the Workers' Party?

A. In Los Angeles.

Q. The Workers' Party later changed its name to the Workers' Communist Party?

A. Yes, sir.

Q. And then to the Communist Party of the United States of America? A. Yes.

(Testimony of William Schneiderman.)

Q. And it is known at the present time as the Communist Party of the United States of America? A. Yes.

Q. You joined the Workers' Party in 1925, did you say? A. About that, yes.

Q. Since that time, you have been affiliated with this organization: Workers' Party, Workers' Communist Party and Communist Party of the United States; isn't that true? A. That is right.

Q. And during all of this time, you have subscribed to the principles of that party?

A. Yes.

Q. Did you occupy any position in the Workers' Party?

A. Yes; I was at one time secretary in Los Angeles.

Q. And during what period were you secretary of the Workers' Party?

A. About 1925 and 1926, I believe.

Q. Were you secretary of the Workers' Party when you received your citizenship papers in Los Angeles on June 10, 1927?

A. I really do not recall.

Q. But you were a member of the party at that time? A. Yes.

Q. Did you occupy any other position with the Workers' Party than secretary?

A. Yes; later, I became the organization secretary of [58] the California district; that was in 1930.

(Testimony of William Schneiderman.)

Q. That was District No. 13?

A. Yes. Do you want all my positions or just that?

Q. Let us keep it, as well as we can, in orderly fashion. You were then organization director of the Workers' Party in 1926?

A. Organization secretary.

Q. Of the Workers' Party?

A. Of the Communist Party of the United States.

Q. Do you remember what year the name was changed from Workers' Party to Workers' Communist Party? A. About 1927.

Q. And then when was the name changed to Communist Party of the United States of Americ.?

A. In 1929.

Q. Where was it that you occupied this position of organizer of the Workers' Party: in California or some other state?

A. I said organization secretary. It was in California. My headquarters were in San Francisco.

Q. During what period did you occupy that position?

A. For about six months in the beginning of 1930.

Q. What were your duties as organization secretary?

A. I handled the dues and membership records.

Q. Did the Workers' Party maintain schools for

(Testimony of William Schneiderman.)

the purpose of educating people with the principles of Marxism and Leninism?

A. At that time, they had study classes and open forums.

Q. Did you participate in the conduct of the study classes or of the open forums?

A. Open forums, I believe I did; not in any study classes at that time.

Q. Did you have the direction of the study classes? A. No.

Q. What was the purpose of the study classes?

A. To discuss the political and economic situation in the country, and teach the theories and practice of Marxism and Leninism.

Q. What books were used in those study classes?

A. A collection of selected works of Marxism and Leninism. [59]

Q. Practically the same books that were used in the Young Workers' League, with such additional works as you received subsequently? A. Yes.

Q. You say for about six months in 1930, you were organization secretary? A. Yes.

Q. And then did you occupy any other position in the Communist Party, Mr. Schneiderman?

A. I was district organizer of the Party in the State of Connecticut.

Q. When was it that you went to Connecticut?

A. In 1930.

Q. And your duties in Connecticut, as district organizer, were similar to the duties you had previously, in California, as an organizer?

(Testimony of William Schneiderman.)

A. I was the executive and political director of the party.

Q. In Connecticut? A. Yes, sir.

Q. How long did that position continue?

A. For a few months.

Q. Then did you occupy any other position with the Communist Party?

A. I became the district organizer of the party in the Minnesota district, which included Northern Wisconsin and Michigan.

Q. During what time were you organizer in the Minnesota district?

A. From about 1931 to 1934.

Q. Then did you return to California in 1934?

A. No.

Q. Where did you go then?

A. I made a visit to Europe, and made a visit in the Soviet Union.

Q. That was in 1934? A. Yes.

Q. Did you go as an official representative of the Communist Party for the United States of America? A. No.

Q. Did you go as a delegate to some congress of the Communist International?

A. No; I went there on a visit; and I stayed there and studied conditions.

Q. You were not a delegate to the Communist International?

A. During the time I was there, the 7th World Congress of the [60] Communist International took place, and I attended that.

(Testimony of William Schneiderman.)

Q. But you were not a delegate to it?

A. No.

Q. Then you returned to the United States, I assume? A. Yes.

Q. And did you come to California then?

A. Yes.

Q. Did you occupy any position with the Communist Party upon your return to California?

A. I was district organizer of the California district.

Q. What district was it? A. District 13.

Q. Do you still occupy that position?

A. No; the party was reorganized on a state basis; and my title now is state secretary of California.

Q. That covers the territory of California?

A. Yes.

Q. The 13th district covered a larger area than California, did it not?

A. Yes; it included Arizona and Nevada.

Q. Now, those are the positions that you have occupied in the Young Workers' League and the Workers' Party and Workers' Communist Party and the Communist Party of the United States of America?

A. I was the delegate to the National Committee of the Communist Party in 1934; and I have been a member of the National Committee ever since.

Q. When you were a member of the Young Workers' League, did you attend conventions of

(Testimony of William Schneiderman.)

the Young Workers' League? A. Yes, I did.

Q. Do you remember what conventions you attended?

A. I think, the Second National Convention and the Third National Convention; I am not sure of any subsequent conventions.

Q. Were you a delegate to those conventions?

A. Yes.

The Court: Fix the time.

Mr. Hennessy: Q. When were those conventions held?

A. The Second Convention was held in 1922; and I do not recall the date of the Third Convention—probably 1924 or 1925.

Q. Now, when you were a member of the Workers' Party, did you attend any conventions of the Workers' Party? A. Yes, I did. [61]

Q. Do you remember the first convention of the Workers' Party that you attended, Mr. Schneiderman?

A. I think I attended the Convention in 1925; but it was not as a delegate. I was in Chicago for a convention of the Young Workers' League; and that convention of the Communist Party took place at the same time.

Mr. Andersen: Q. What was that date?

A. About 1925.

Mr. Hennessy: Q. Did you attend the so-called Second Convention of the Workers' Party, held on December 31, 1923 to January 2, 1924? A. No.

(Testimony of William Schneiderman.)

Q. Did you attend any subsequent conventions of the Workers' Party?

A. Not of the Workers' Party.

Q. Well, of the Workers' Communist Party or of the Communist Party?

A. Yes; I attended the national conventions in 1930, 1932, 1934, 1936 and 1938.

Q. As a delegate? A. As a delegate.

Q. Now, did you attend the International Convention in 1928? A. No.

Q. Were you a member of the Communist Party in 1928? A. Yes.

Q. Did the Communist Party maintain any literature department? A. Yes, it did.

Q. What was the name of the literature department in the Communist Party?

A. What was that?

Q. What was the name of the literature department of the Communist Party?

A. It is called the literature department of the Communist Party.

Q. Do they conduct any publication agencies or publication houses?

Mr. Andersen: At this time, if your Honor, we will object to that as calling for the conclusion and opinion of the witness.

Mr. Hennessy: He ought to know; he occupied an official position.

The Witness: A. There is a literature department; and, in addition to that, in recent years, the

(Testimony of William Schneiderman.)

Party has carried on its [62] work through a corporation known as the Workers' Library Publishers and the International Publishers.

Q. One of the publishers you named was the Workers' Library Publishers? A. Yes.

Q. That was a subsidiary of the Communist Party, was it?

Mr. Andersen: To which we object as calling for the conclusion and opinion of the witness.

The Court: Well——

Mr. Hennessy: If he knows.

The Court: If he knows, he may answer.

The Witness: A. I do not understand the question with regard to its being a subsidiary of the Communist Party.

Mr. Hennessy: Q. Was it an agent of the Communist Party?

A. It was organized by members of the Communist party to publish Communist publications.

Q. Under the direction of the National Committee of the Communist Party?

Mr. Andersen: The same objection: that it calls for the opinion and conclusion of the witness.

The Court: Q. It was organized by whom?

A. They were organized by members of the Communist Party to publish Communist publications.

Q. Was that when you were a member?

A. Oh, many years before I became a member.

Mr. Hennessy: Q. Do you remember when that

(Testimony of William Schneiderman.)

agency was organized to publish these publications of the Communist Party?

A. No; I do not recall.

Q. Is it still functioning? A. Yes, sir.

Q. Are there any other publishing companies that publish literature for the Communist Party?

A. Not that I know of.

The Court: It is time to adjourn.

(An adjournment was taken until 2 o'clock p. m., this date.) [63]

Afternoon Session

Mr. Andersen: Mr. Kenny, whom I associated in the case this morning was admitted to the court in the Southern District. May I move at this time his admission into this district?

The Court: Yes.

WILLIAM SCHNEIDERMAN,

recalled.

Direct Examination

(continued)

Mr. Hennessy: Q. Did the Daily Workers have any official newspaper?

Mr. Andersen: I do not believe that any such organization as that has been mentioned in court; and I object to that on the ground that is assuming something not in evidence.

Mr. Hennessy: Q. The Workers' Communist Party. A. Daily Workers' Party.

Q. Do they have an official newspaper?

(Testimony of William Schneiderman.)

A. Yes.

Q. What was the name of that paper?

A. The Daily Worker.

Q. During what period was it published?

A. Beginning from 1924 to date.

Q. Were you at any time connected with that newspaper? A. No.

Q. Were you special correspondent of it?

A. At times, I would send them some news items that they requested.

Q. I mean items with respect to the activities of the Communist Party.

A. Not necessarily. I wrote articles, on request, as an official of the Communist Party; but I was not a correspondent of the Daily Worker.

Q. Do you remember when you commenced sending articles in to the Daily Worker?

A. The first one I recall was when I was a delegate to the American Federation of Labor Convention in Los Angeles; and I believe I wrote some of the stories regarding that convention, for the Daily Worker. [64]

Q. What year was that?

A. In 1927, in the fall; October or November, I believe.

Q. Did you write any articles, prior to that, for the Daily Worker? A. I do not recall.

Q. Albert J. Bock was one of the witnesses who signed your petition for naturalization?

A. Yes, sir.

(Testimony of William Schneiderman.)

Q. Was he a member of the Workers' Party at the time he signed?

Mr. Andersen: We object to that as immaterial, irrelevant and incompetent.

The Witness: A. As I recall, he was at one time a member of the Young Workers' League; I don't know the exact date, because it was only for a very short time; I don't know whether he was a member of the Workers' Party; I believe not.

Q. Was he a member of the Young Workers' League at the time he signed the petition for your naturalization, as a witness?

A. I would not say for certain.

Mr. Andersen: I object to that, your Honor.

The Court: Overruled.

Mr. Hennessy: Q. You knew, of course, Minnie Karasick, who was also one of the witnesses.

A. Yes.

Q. Was she a member of the Young Workers' League at the time she signed as a witness to your naturalization petition? A. Yes.

Q. During all this period to which you have testified you were a member of the Young Workers' League, Young Workers' Party, Young Workers' Communist League, Young Communist League, Workers' Party, Workers' Communist Party and Communist Party of the United States of America, you subscribed to the principles of those parties during all of those years, didn't you?

A. Yes, I did.

(Testimony of William Schneiderman.)

Q. During all this period, you believed in and advocated the doctrine of the Socialistic principles promulgated by Marx and Lenin at that time?

A. I believed in the essential correctness of the Marx theory as applied by the Communist Party of the United States. [65]

Q. Did you also subscribe to the philosophy and principles of Socialism as manifested in the writings of Lenin? A. Yes.

Q. Are you familiar with the programme of the Communist International, enunciated, I think, in 1928?

A. Yes; I am familiar with it in so far as I have read the resolutions and reports of that congress.

Q. I show you what purports to be a book designated "Programme of the Communist International," and ask you if you have ever seen this book before, not that particular volume but a book having that designation. A. I believe I have.

Q. You are familiar with its contents and you subscribe to the principles enunciated in this book?

A. I agree with the general political conclusions that were adopted by that congress.

Q. This was adopted in 1928, was it not?

A. That is right.

Mr. Hennessy: I desire to offer this book in evidence.

Mr. Andersen: To which we will object, as there has been no proper foundation laid for the introduction of this type of evidence, so far as the complaint in this case alleges. In the first place, there is no

(Testimony of William Schneiderman.)

showing that a proper foundation has been laid for the introduction of the book itself. The complaint in this case, as I understand it, charges this defendant with having, at that time, believed in an overthrow of the Government of the United States of America by force and violence. I understand this book is just a general reference to the Communist International, which has no possible bearing or relation to the problem before the Court in this particular case.

Mr. Hennessy: We expect to show, may it please the Court, in the course of this trial, the Communist Party of the United States is affiliated with the Communist International, which is the world-wide Communist Party; that the program of the Communist International is the program of the Communist Party of the United States, and Mr. Schneiderman is a member of the Communist Party of [66] the United States of America, an official in it, and he believes in the principles enunciated in this program; and that the principles enunciated in this program are at variance with the terms of the United States Constitution. The principles enunciated in this program advocate the abolition of private property, the destruction of capitalistic government, the establishment of the dictatorship of the proletariat, and ultimately the Communist society in which everything shall be held and all persons shall be workers. On that theory, we think it is admissible. These documents issued by these parties have been held admissible in the case of

(Testimony of William Schneiderman.)

United States versus Tapolcsanyi, and many other cases. The Tapolcsani case was a cancellation of a naturalization, upon the ground that the defendant was a member of the Communist Party. The Court of Appeals of the Third Circuit decided that case on April 17, 1931. It is found in 40 Federal, 2nd, page 255. In that particular case, the Communist principles in the form of a copy of a "Manifesto and Programme, Constitution of the Communistic Party of America," were offered in evidence; and the Court admitted them in evidence, and, on the appeal, the Court of Appeals held they were properly admissible in evidence. I would like to call your Honor's attention to a quotation:

> "Having there declared himself a Communist for a period beginning before the date of his petition for naturalization and continuing after his naturalization and having thus clearly attested his attachment to the principles of the International Workingmen whose leader is the III Communist International, the government, in order to show that, contrary to his declaration under oath, he was not at the time of his application attached to the principles of the Constitution of the United States, introduced evidence of communistic principles in the form of a copy of a 'Manifesto and Program, Constitution of the Communistic Party of America—report to the Communist International,' the latter being the organization [67] or a re-

(Testimony of William Schneiderman.)

lated organization of the type of the one to which he referred in his letter and in his testimony as vivifying his principles. Sensing the effect of this document, the respondent vigorously resisted its admission in evidence and now earnestly assigns its admission as reversible error on the grounds that it was not formally proved in that the government failed to prove its adoption by the Communist Party of America; and that, if genuine, it was a declaration not binding on the respondent who, though he held a membership card issued to him by that organization, says he is not a member of that party."

This case is stronger. The defendant admits he is a member.

"In disposing of this assignment of error, together with a related assignment charging error in permitting a witness for the government to explain the political policies and relations of these communistic parties, it will be enough to say that if this were a suit in reliance upon, or growing out of, the constitution of one or another of these organizations, its constitution would of course have to be proved under familiar rules of evidence. But this is a proceeding in which a search was being made for the respondent's principles, which may be proved by showing the principles of the organizations of which he approved. Their principles

(Testimony of William Schneiderman.)

may be found in their utterances made in as nearly a formal way as they are susceptible, namely: in published documents circulated to the public with the purpose of enlisting its adherence."

They held that this particular book was properly received in evidence.

Mr. Andersen: We want our objection specifically to go to this point: that, so far as this particular piece of literature is concerned, there is no showing before this Court, nor has the question been asked of the witness, as to the extent of affiliation between the Communist Party of the United States and Communist International; that question has not been asked of the [68] witness. It is not something in evidence at the present time. This book, in and of itself, cannot be introduced in evidence for the specific purpose of serving as some evidence that has been so far left out of the record; nor has there been any showing that any program, as set forth in this proffered evidence, is binding upon the Communist Party of the United States of America. Before this defendant may be bound by any piece of literature, it must be shown as I view the pleading in this case: that not only does this witness but the Communist Party of the United States of America subscribe to all of the doctrines and tenets set forth in the particular literature.

(Testimony of William Schneiderman.)

Mr. Hennessy: He has expressed his approval of the principles enunciated.

The Court: If there is any question about the foundation, you may make further inquiry, if you wish.

Mr. Henenssy: Q. You testified, did you not, that you approved the principles enunciated in this program of the Communist International at their convention in 1928—didn't you?

Mr. Andersen: If I may object, that is a misstatement of the record, as I recall it.

The Court: He is asking that question now.

Mr. Andersen: I will object on the ground that it has already been asked and answered.

The Court: He may answer.

The Witness: A. I said that I agreed with the general theoretical conclusions stated in the program of Communist International.

Mr. Hennessy: Q. What do you mean by "general theoretical conclusions"?

A. Marxism is a philosophy and science; and it delves into the theory of politics and economics and all of the social forces; and the program of the Communist International is an interpretation of the Marxism theory, as it applies to general world [69] conditions. The application of that theory is something else.

Q. You approve of the program, as expressed by this book?

A. In so far as it interprets general Marxism

(Testimony of William Schneiderman.)

and Lenin theories, I am in full agreement with it.

Mr. Hennessy: I offer it in evidence.

Mr. Andersen: I renew the objection.

The Court: The objection will be overruled. It may be admitted and marked.

(Document marked "Government's Exhibit No. 6.")

Mr. Hennessy: We have made certain excerpts, Mr. Andersen, from the book which we have offered in evidence for the purpose of convenience, of which we will furnish you a copy for facilitating the examination of the book in the preparation of briefs, so that you will know what particular part of the book we rely on. You can select such parts as you desire in your brief.

Mr. Andersen: You are introducing the book in evidence, and will supply us with excerpts?

Mr. Hennessy: Yes.

The Court: Either side may use any part or portion of the book.

Mr. Andersen: We have no objection to that.

(The excerpts from "Programme of the Communist International" were marked "Government's Exhibit No. 6A.")

U. S. EXHIBIT No. 6-A

PROGRAMME OF THE COMMUNIST INTERNATIONAL

(The Program of the Communist International, together with the Constitution, was adopted at the

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

forty-sixth Session of the Sixth World Congress of the Communist International, September 1, 1928.)

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Programme of the Communist International
Page 8

"* * * Expressing the historical need for an international organization of revolutionary proletarians—the gravediggers of the capitalist order—the Communist International is the only international force that has for its programme the dictatorship of the proletariat and Communism, and that openly comes out as the organizer of the international proletarian revolution."

Programme of the Communist International
Pages 14-15

"Hence, the development of capitalism, and particularly the imperialist epoch of its development, reproduces the fundamental contradictions of capitalism on an increasingly magnified scale. Competition among small capitalists ceases, only to make way for competition among big capitalists; where competition among big capitalists subsides, it flares up between gigantic combinations of capitalist magnates and their governments; local and national crises become transformed into crises affecting a

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

number of countries and, subsequently, into world crises; local wars give way to wars between coalitions of States and to world wars; the class struggle changes from isolated actions of single groups of workers into nation-wide conflicts and subsequently, into an international struggle of the world proletariat against the world bourgeoisie. Finally, two main revolutionary forces are organizing against the organized might of finance capital—on the one hand the workers in the capitalist States, on the other hand, the victims of the oppression of foreign capital, the masses of the people in the colonies, marching under the leadership and the hegemony of the international revolutionary proletarian movement."

Programme of the Communist International

Page 28

III. The Ultimate Aim of the Communist International—World Communism.

"The ultimate aim of the Communist International, to replace world capitalist economy by a world system of Communism. Communist society, the basis for which has been prepared by the whole course of historical development, is mankind's only way out, for it alone can abolish the contradictions of the capitalist system which threatens to degrade and destroy the human race."

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

Programme of the Communist International

Page 28

"The abolition of private property and the disappearance of classes will do away with the exploitation of man by man."

Programme of the Communist International

Page 32

IV. The Period of Transition From Capitalism to Socialism and the Dictatorship of the Proletariat.

1. The Transition Period and the Conquest of Power by the Proletariat.

"Between capitalist society and Communist society a period of revolutionary transformation intervenes, during which the one changes into the other. Correspondingly, there is also an intervening period of political transition, in which the essential State form is the revolutionary dictatorship of the proletariat. The transition from the world dictatorship of imperialism to the world dictatorship of the proletariat extends over a long period of proletarian struggles with defeats as well as victories; a period of continuous general crisis in capitalist relationships and growth of social revolutions, i.e., of proletarian civil wars against the bourgeoisie; a period of national wars and colonial rebellions which, although not in themselves revolutionary

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

proletarian socialist movements, are nevertheless, objectively, insofar as they undermine the domination of imperialism, constituent parts of the world prelotarian revolution; a period in which capitalist and socialist economic and social systems exist side by side in "peaceful" relationships as well as in armed conflict; a period of formation of a Union of Soviet Republics; a period of wars of imperialist States against Soviet States; a period in which the ties between the Soviet States and colonial peoples become more and more closely established, etc."

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Page 34

"The conquest of power by the proletariat does not mean peacefully 'capturing' the ready-made bourgeois State machinery by means of a parliamentary majority. The bourgeoisie resorts to every means of violence and terror to safeguard and strengthen its predatory property and its political domination. Like the feudal nobility of the past, the bourgeoisie cannot abandon its historical position to the new class without a desperate and frantic struggle. Hence, the violence of the bourgeoisie can be suppressed only by the stern violence of the proletariat. The conquest of power by the proletariat is the violent overthrow of bourgeois power, the de-

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

struction of the capitalist State apparatus (bourgeois armies, police, bureaucratic hierarchy, the judiciary, parliaments, etc.), and substituting in its place new organs of proletarian power, to serve primarily as instruments for the suppression of the exploiters."

Programme of the Communist International

Pages 38-40

"In this sphere the Communist International advances the following fundamental tasks of the proletarian dictatorship:

"A. Industry, Transport and Communication Services.

"a) The confiscation and proletarian nationalization of all large private capitalist undertakings (factories, works, mines and electric power stations) and the transference of all State and municipal enterprises to the Soviets.

"b) The confiscation and proletarian nationalization of private capitalist railway, waterway, automobile and air transport services (commercial and passenger air fleet) and the transference of all State and municipal transport services to the Soviets.

"c) The confiscation and proletarian nationalization of private capitalist communication services (telegraphs, telephones and wireless) and the trans-

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

ference of State and municipal communication services to the Soviets."

* * * * * * *

"B. Agriculture.

"a) The confiscation and proletarian nationalization of all large landed estates in town and country (private, church, monastery and other lands) and the transference of State and municipal landed property including forest, minerals, lakes, rivers, etc., to the Soviets with subsequent nationalization of the whole of the land.

"b) The confiscation of all property utilized in production belonging to large landed estates, such as: buildings, machinery and other inventory, cattle, enterprises for the manufacture of agricultural products (large flour mills, cheese plants, dairy farms, fruit and vegetable drying plants, etc.).

"c) The transfer of large estates, particularly model estates and those of considerable economic importance, to the management of the organs of the proletarian dictatorship and of the Soviet farm organizations.

* * * * * * *

"e) Prohibition of buying and selling of land, as a means of preserving the land for the peasantry and preventing its passing into the hands of capitalists, land speculators, etc. Offenders against this law to be severely prosecuted."

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

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Page 47

5. Dictatorship of the Proletariat and the Classes

"The dictatorship of the proletariat is a continuation of the class struggle under new conditions. The dictatorship of the proletariat is a stubborn fight—bloody and bloodless, violent and peaceful, military and economic, pedagogical and administrative,—against the forces and traditions of the old society, against external capitalist enemies, against the remnants of the exploiting classes within the country, against the upshoots of the new bourgeoisie that spring up on the basis of still prevailing commodity production."

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"* * * Hence, revolution is not only necessary because there is no other way of overthrowing the ruling class, but also because, only in the process of revolution is the overthrowing class able to purge itself of the dross of the old society and become capable of creating a new society."

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

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Page 53

"One of the most important tasks of the cultural revolution affecting the wide masses, is the task of systematically and unswervingly combating religion —the opium of the people. The proletarian government must withdraw all State support from the Church, which is the agency of the former ruling class; it must prevent all church interference in State-organized educational affairs, and ruthlessly suppress the counter-revolutionary activity of the ecclesiastical organizations. At the same time, the proletarian State, while granting liberty of worship and abolishing the privileged position of the formerly dominant religion, carries on anti-religious propaganda with all the means at its command and reconstructs the whole of its educational work on the basis of scientific materialism."

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Page 65

"In the event of the imperialist States declaring war upon and attacking the U.S.S.R., the international proletariat must retaliate by organizing bold and determined mass action and struggling for the overthrow of the imperialist governments with the slogan of: Dictatorship of the proletariat and alliance with the U.S.S.R.

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

"In the colonies, and particularly the colonies of the imperialist country attacking the U.S.S.R., every effort must be made to take advantage of the diversion of the imperialist military forces to develop an anti-imperialist struggle and to organize revolutionary action for the purpose of throwing off the yoke of imperialism and of winning complete independence."

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Page 75

"Standing out against all these tendencies is Proletarian Communism. The powerful ideology of the international revolutionary working class, it differs from all these tendencies, and primarily from Social Democracy, in that in complete harmony with the teachings of Marx and Engels, it conducts a theoretical and practical revolutionary struggle for the Dictatorship of the Proletariat, and in the struggle applies all forms of proletarian mass action."

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Page 83

"* * * The fundamental slogans of the Communist International in this connection must be the following: Convert imperialist war into civil war;

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

defeat the 'home' imperialist government; defend the U. S. S. R. and the colonies by every possible means in the event of imperialist war against them. It is the bounden duty of all Sections of the Communist International, and of every one of its members, to carry on propaganda for these slogans, to expose the 'socialistic' sophisms and the 'socialist' camouflage of the League of Nations and constantly to keep to the front the experiences of the war of 1914-1918."

Programme of the Communist International

Pages 85-92

"Constitution and Rules of the Communist International

"1. Name and Objects

"1. The Communist International—the International Workers' Association—is a union of Communist Parties in various countries; it is a World Communist Party. As the leader and organizer of the world revolutionary movement of the proletariat and the upholder of the principles and aims of Communism, the Communist International strives to win over the majority of the working class and the broad strata of the propertyless peasantry, fights for the establishment of the world dictatorship of the proletariat, for the establishment of a World Union of Socialist Soviet Republics, for the complete abolition of classes and for the achievement of socialism—the first stage of Communist society.

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

"2. Each of the various Parties affiliated to the Communist International is called the Communist Party of (name of country) (Section of the Communist International). In any given country there can be only one Communist Party affiliated to the Communist International and representing its Section in that country.

"3. Membership in the Communist Party and in the Communist International is open to all those who accept the programme and rules of the given Communist Party and of the Communist International, who join one of the basic units of a Party, actively work in it, abide by all the decisions of the Party and of the Communist International, and regularly pay Party dues.

* * * * * * *

"Party questions may be discussed by the members of the Party and by Party organizations until such time as a decision is taken upon them by the competent Party committees. After a decision has been taken by the Congress of the Communist International, by the Congress of the respective Sections, or by leading committees of the Comintern, and of its various Sections, these decisions must be unreservedly carried out even if a Section of the Party membership or of the local Party organizations are in disagreement with it.

"In cases where a Party exists illegally, the superior Party committees may appoint the sub-

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

ordinate committees and coopt members on their own committees, subject to subsequent endorsement by the competent superior Party committees.

* * * * * * *

"8. The supreme body of the Communist International is the World Congress of representatives of all Parties (Sections) and organizations affiliated to the Communist International.

"The World Congress discusses and decides programme, tactical and organizational questions connected with the activities of the Communist International and of its various Sections. Power to alter the programme and rules of the Communist International lies exclusively with the World Congress of the Communist International.

* * * * * * *

"12. The leading body of the Communist International in the period between Congresses is the Executive Committee, which gives instructions to all the Sections of the Communist International and controls their activity.

* * * * * * *

"13. The decisions of the E. C. C. I. are obligatory for all the Sections of the Communist International and must be promptly carried out. The Sections have the right to appeal against decisions of the E. C. C. I. to the World Congress, but must continue to carry out such decisions pending the decision of the World Congress.

* * * * * * *

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 6A—continued.)

"29. The Central Committees of Sections affiliated to the Communist International and the Central Committees of affiliated sympathizing organizations must send to the E. C. C. I. the Minutes of their meetings and reports of their work.

* * * * * * *

"35. The International League of Communist Youth (Communist Youth International) is a Section of the Communist International with full rights and is subordinate to the E. C. C. I."

[Endorsed]: U. S. Exhibit No. 6-A. Filed Dec. 7, 1939. Walter B. Maling, Clerk. By J. A. Schaertzer.

Mr. Hennessy: Q. I show you what purports to be a "Manifesto of the Communist Party by Karl Marx and Friedrich Engels," and ask you if you are familiar with the contents of this book.

A. I am familiar with the Communist Manifesto; but this is not, in my opinion, an authorized translation. This translation is an interpretation of the language of the Manifesto when translated from German into English; and there has been some conflict about that. This is not the authorized version, so far as I know. This is published by Charles Kerr. [70]

Q. I show you this book purporting to be the "Manifesto of the Communist Party by Karl Marx and Friedrich Engels," published by the Interna-

(Testimony of William Schneiderman.)

tional Publishers, New York, entitled, "Authorized English Translation"; and ask you if you are familiar with this particular publication.

A. Yes, I am.

Q. And is that one of the authorized publications of the Communist Manifesto by Marx and Engels? A. I believe it is.

Q. Do you approve of the principles enunciated in this Communist Manifesto of Marx and Engels?

A. This manifesto is the basis of tactics for Communism, under the Marxism theory. I believe that these general principles of Marxism, particularly as they applied to the period in which they were written and the country about which they were written, are entirely correct.

Q. Did you approve of those principles when you were admitted to citizenship in the United States District Court for the Southern District of California? A. Yes, I did.

Mr. Hennessy: I desire to offer this book in evidence, your Honor.

The Court: It may be admitted and marked.

(The document was marked "Government's Exhibit 7," and the excerpts therefrom, "Government's Exhibit 7A.")

(Testimony of William Schneiderman.)

U. S. EXHIBIT No. 7-A

MANIFESTO OF THE COMMUNIST PARTY

by

Karl Marx and Friedrich Engels

International Publishers
New York

Communist Manifesto

Page 22

"The immediate aim of the Communists is the same as that of all the other proletarian parties; formation of the proletariat into a class, overthrow of bourgeois supremacy, conquest of political power by the proletariat."

Communist Manifesto

Page 23

"In this sense, the theory of the Communists may be summed up in the single sentence: Abolition of private property."

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 7-A—continued)

Communist Manifesto

Page 25

"In a word, you reproach us with intending to do away with your property. Precisely so; that is just what we intend."

Communist Manifesto

Page 28

"The Communists are further reproached with desiring to abolish countries and nationality.

"The working men have no country. We cannot take from them what they have not got. Since the proletariat must first of all acquire political supremacy, must rise to be the leading class of the nation, must constitute itself the nation, it is, so far, itself national, though not in the bourgeois sense of the word."

Communist Manifesto

Page 30

"Nevertheless in the most advanced countries the following will be pretty generally applicable:

"1. Abolition of property in land and application of all rents of land to public purposes.

* * * * * * *

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 7-A—continued)

"3. Abolition of all right of inheritance.

* * * * * * *

"6. Centralization of the means of communication and transport in the hands of the State.

* * * * * * *

"9. Combination of agriculture with manufacturing industries; gradual abolition of the distinction between town and country, by a more equable distribution of the population over the country.

"10. * * * If the proletariat during its contest with the bourgeoisie is compelled, by the force of circumstances, to organize itself as a class, if, by means of revolution, it makes itself the ruling class, and, as such, sweeps away by force the old conditions of production, then it will, along with these conditions, have swept away the conditions for the existence of class antagonisms, and of classes generally, and will thereby have abolished its own supremacy as a class."

Communist Manifesto

Page 44

"In short, the Communists everywhere support every revolutionary movement against the existing social and political order of things.

"In all these movements they bring to the front, as the leading question in each case, the property

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 7-A—continued)

question, no matter what its degree of development at the time.

"Finally, they labor everywhere for the union and agreement of the democratic parties of all countries.

"The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at the Communist revolution. The proletarians have nothing to lose but their chains. They have a world to win.

"Working men of all countries, unite!"

[Endorsed]: U. S. Ex. 7-A. Filed Dec. 7, 1939.

Mr. Hennessy: Q. Mr. Schneiderman, in your testimony this morning you stated that a book called, "The State and Revolution," by Nicolai Lenin, was used in the educational work of Young Workers' League when you were educational director? A. Yes.

Q. I show you this book and ask you if this is the book to which you referred.

A. On second thought, I do not think—I am not absolutely sure that this book was used at that time, because I do not think it was available in

(Testimony of William Schneiderman.)

the English language in the United States at that time.

Q. Was it later used?

A. As I recall, this was published here probably around 1924 or 1925. [71]

Q. Was it later used in the educational work of the Young Workers' League and Workers' Communist League?

A. Probably was; I don't know, because I was not active.

Q. Was it circulated by the Communist Party?

A. It was circulated by the literature department.

Q. It purports to be published by The Workers Party of America, by The Daily Worker Publishing Company. The Daily Workers Publishing Company was authorized to issue Communist literature, was it not? A. That I don't know.

Mr. Hennessy: I desire to offer this in evidence, with the excerpts, may it please your Honor.

(Documents marked, respectively, "Government's Exhibits Nos. 8 and 8A.")

(Testimony of William Schneiderman.)

U. S. EXHIBIT NO. 8-A

THE STATE AND REVOLUTION

by

V. I. Ulianov—(Nicolai Lenin)

Published for The Workers Party of America by
The Daily Worker Publishing Co.
Chicago, Ill. U. S. A.

New Edition April 1924

The State and Revolution

Page 3.

Chapter I.

"Class Society and the State.

"1. The State as the Product of the Irreconcilability of Class Antagonisms.

"Marx's doctrines are now undergoing the same fate which, more than once in the course of history, has befallen the doctrines of other revolutionary thinkers and leaders of oppressed classes struggling for emancipation. During the lifetime of great revolutionaries, the oppressing classes have invariably meted out to them relentless persecution, and received their teaching with the most savage hostility, most furious hatred, and a ruthless campaign of lies and slanders. After their death, however, attempts are usually made to turn them into harmless saints, canonizing them, as it were, and

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

investing their name with a certain halo by way of 'consolation' to the oppressed classes, and with the object of duping them, while at the same time emasculating and vulgarizing the real essence of their revolutionary theories and blunting their revolutionary edge. At the present time the bourgeoisie and the opportunists within the labor movement are co-operating in this work of adultering Marxism. They omit, obliterate, and distort the revolutionary side of its teaching, its revolutionary soul, and push to the foreground and extol what is, or seems, acceptable to the bourgeoisie. All the Socialist Chauvinists are now 'Marxists'—save the mark! And more and more do German bourgeois professors, erstwhile specialists in the demolition of Marx, speak now of the 'National-German' Marx who, forsooth, has educated the splendidly organized working class for the present predatory war."

The State and Revolution

Page 4.

"Let us begin with the most popular of Engels' works, The Origin of the Family, Private Property, and the State, the sixth edition of which was published in Stuttgart as far back as 1894. Summarizing his historical analysis Engels says:

'The State in no way constitutes a force imposed on Society from outside. Nor is the State

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

'the reality of the Moral Idea,' 'the image and reality of Reason', as Hegel asserted. The State is the product of Society at a certain stage of its development. The State is tantamount to an acknowledgment that the given society has become entangled in an insoluble contradiction with itself, that it has broken up into irreconcilable antagonisms, of which it is powerless to rid itself. And in order that these antagonisms, these classes with their opposing economic interests, may not devour one another and Society itself in their sterile struggle, some force standing, seemingly, above Society, becomes necessary so as to moderate the force of their collisions and to keep them within the bounds of "order." And this force arising from Society, but placing itself above it, which gradually separates itself from it—this force is the State.' (Pages 117-178 of 6th German Edition)

"Here, we have, expressed in all its clearness, the basic idea of Marxism on the question of the historical role and meaning of the State. The State is the product and the manifestation of the irreconcilability, of class antagonisms. When, where and to what extent the State arises, depends directly on when, where and to what extent the class antagonisms of a given society cannot be objectively reconciled. And, conversely, the existence

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

of the State proves that the class antagonisms are irreconcilable."

The State and Revolution

Pages 5 and 6.

"* * * According to Marx, the State is the organ of class domination, the organ of oppression of one class by another. Its aim is the creation of order which legalizes and perpetuates this oppression by moderating the collisions between the classes * * *

"* * * * *

"* * * If the State is the product of the irreconcilable character of class antagonisms, if it is a force standing above society and 'separating itself gradually from it,' then it is clear that the liberation of the oppressed class is impossible without a violent revolution, and without the destruction of the machinery of State power, which has been created by the governing class and in which this 'separation' is embodied. This inference, theoretically quite self-evident, was drawn by Marx, as we shall see later, with the greatest precision from a concrete historical analysis of the problems of Revolution. And it is exactly this inference which Kautsky —we shall show this fully in our subsequent remarks—has 'forgotten' and distorted."

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

The State and Revolution

Pages 10-13 inclusive

"A general summary of his views is given by Engels in the most popular of his works in the following words:

> "'Thus, the State has not always existed. There were societies which did without it, which had no idea of the State or of State power. At a given stage of economic development, which was necessarily bound up with the break up of society into classes, the State became a necessity, as a result of this division. We are now rapidly approaching a stage in the development of production, in which the existence of these classes is not only no longer necessary but is becoming a direct impediment to production. Classes will vanish as inevitably as they inevitably arose in the past. With the disappearance of classes the State, too, will inevitably disappear. When organizing production anew on the basis of a free and equal association of the producers, Society will banish the whole State machine to a place which will then be the most proper one for it—to the museum of antiquities side by side with the spinningwheel and the bronze axe.'

"It is not often that we find this passage quoted in the propagandist literature of contemporary So-

(Testimony of William Schneiderman.)
(U. S. Exhibit No. 8-A continued)

cial Democracy. But even when we do come across it, it is generally quoted as some sacred or ritual formula, that is, merely to show official respect for Engels, without any attempt to gauge the width and the depth of the revolutionary act presupposed by this 'banishment of the whole State machine to the museum of antiquities.' And often one cannot even trace the least comprehension of what Engels calls the State machine.

"4. The Withering Away of the State and Revolution by Force.

Engels' words regarding the 'withering away' of the State enjoy such a popularity, are so often quoted, and reveal so clearly the essence of the common adulteration of Marxism in an opportunist sense that we must examine them in detail. Let us give the whole argument from which they are taken.

> " 'The proletariat takes control of the State authority and, first of all, converts the means of production into State property. But by this very act it destroys itself, as a proletariat, destroying at the same time all class differences and class antagonisms, and with this, also, the State. Past and present Society, which moved amidst class antagonisms, had to have the State, that is, an organization of the exploiting class for the support of its external conditions of production, therefore, in particular, for the

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

forcible retention of the exploited class in such conditions of oppression (such as slavery, serfdom, wage-labor), as are determined by the given methods of production. The State was the official representative of the whole Society, its embodiment in a visible corporation: but it was such only in so far as it was the State of that class which, in the given epoch, alone represented the whole of Society. In ancient times it was the State of the slave-owners—the only citizens of the State: in the middle ages it was the State of the feudal nobility: in our own times it is the State of the capitalists. When ultimately, the State really becomes the representative of the whole of Society, it will make itself superfluous. From the time when, together with the class domination and the struggle for individual existence, resulting from the present anarchy in production, those conflicts and excesses which arise from this struggle will all disappear—from that time there will be nobody oppressed: there will, therefore, be no need for any special force of oppression—no need for the State. The first act of the State, in which it really acts as the representative of the whole of Society, namely, the assumption of control over the means of production on behalf of Society, is also its last independent act as a State. The interference of the authority

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

of the State with social relations will then become superfluous in one field after another, and finally will cease of itself. The authority of the Government over persons will be replaced by the administration of things and the direction of the processes of production. The State will not be "abolished"; it will wither away. It is from this point of view that we must appraise the phrase, "a free popular State"—a phrase which, for a time, had a right to be employed as a purely propaganda slogan, but which in the long run is scientifically untenable. It is also from this point of view that we must appraise the demand of the so-called anarchists that the State "should be abolished overnight.'' Herr Eugen Duehrings Umaeizung der Wissenschaft, p. 302, 303, Third German Edition.

"Without fear of committing an error, it can be said that the only point in this argument by Engels, so singularly rich in ideas, which has become an integral part of Socialist though among modern Socialist parties, has been that, according to Marx, the State 'withers away' in contradiction to the Anarchist teaching of the 'abolition' of the State. To emasculate Marxism in such a manner is simply to reduce it to opportunism, for such an 'interpretation' only leaves the semi-articulate con-

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

ception of a slow, even, continuous change, free from leaps and storms, free from Revolution. The current popular conception, if one may say so, of the 'withering away' of the State undoubtedly means a quenching, if not negation, of Revolution. Yet, such an 'interpretation' is a most vulgar distortion of Marxism, advantageous only to the capitalist classes and based theoretically on the neglect of the most important conditions and considerations pointed out in the very passage summarizing Engels' ideas, which we have just quoted in full.

"In the first place, at the very outset of his argument, Engels says that in assuming State power, the proletariat 'by that very act destroys the State as such'. It is not the custom to reflect on what this really means. Generally, it is either ignored altogether or it is considered as a piece of 'Hegelian weakness' on Engels' part. As a matter of fact, however, these words express succinctly the experience of one of the greatest proletarian revolutions—the Paris Commune of 1871, of which we shall speak in greater detail in its own place. In reality, Engels speaks here of the destruction of the capitalist State by the proletarian revolution, while the words about its withering away refer to the remains of a proletarian State after the Socialist revolution. The capitalist State does not wither away, according to Engels, but is destroyed by the proletariat in the course of the

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

revolution. Only the proletarian State or semi-State withers away after the revolution.

"Second, the State is a 'particular power of suppression.' This splendid and extremely profound definition of Engels is given by him here with complete lucidity. It follows therefrom that the 'particular power of suppression' of the proletariat by the capitalist class, of the millions of workers by a handful of rich, must be replaced by a 'particular power of suppression' of the capitalist class by the proletariat (the dictatorship of the proletariat). It is just this that constitutes the destruction of the State as such. It is just this that constitutes the 'act' of taking possession of the means of production on behalf of Society. And it is obvious that such a substitution of one (capitalist) 'particular power' by another (proletarian) 'particular power' could in no way take place in the form of a 'withering away.'

"Third, in using the term 'withering away', Engels refers quite clearly and definitely to the period after 'the taking over of the means of production by the State on behalf of the whole of Society,' that is, after the Socialist Revolution. We all know that the proletarian form of the 'State' is then an absolutely complete democracy. But it never enters the head of any of the opportunists who shamelessly distort Marx that Engels deals here with the withering away of the Democracy. At first sight

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

this seems very strange. But it will only be unintelligible to one who has not reflected on the fact that Democracy will also disappear when the State disappears. Only a revolution can 'destroy' the capitalist State. The State in general, that is, most complete democracy, can only wither away.

"Fourth, having formulated his famous proposition that the 'State withers away,' Engels at once explains concretely that this proposition is directed equally against the opportunists and the anarchists. In doing this, however, Engels draws, in the first place, that deduction from his proposition which is directed against the opportunists."

The State and Revolution

Pages 14-15.

"Fifth, in the same work of Engels, from which everyone remembers his argument on 'withering away' of the State, there is also a disquisition on the nature of a violent revolution; and the historical appreciation of its role becomes, with Engels, a veritable panegyric of a revolution by force. This, of course, no one remembers. To talk or even to think of the importance of this idea, is not considered respectable by our modern Socialist parties, and in the daily propaganda and agitation among the masses it plays no part whatever. Yet it is

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

indissolubly bound up with the 'withering away' of the State in one harmonious whole. Here is Engels' argument:

> 'That force also plays another part in history (other than that of a perpetuation of evil), namely, a revolutionary part; that, as Marx says, it is the midwife of every old society when it is pregnant with a new one; that force is the instrument and the means by which social movements hack their way through and break up the dead and fossilized political forms—of all this not a word by Herr Duehring. Duly, with sighs and groans, does he admit the possibility that for the overthrow of the system of exploitation force may, perhaps, be necessary, but most unfortunate if you please, because all use of force, forsooth, demoralizes its user! And this is said in face of the great moral and intellectual advance which has been the result of every victorious revolution! And this is said in Germany where a violent collision—which might, perhaps, be forced on the people—should have, at the very least, this advantage, that it would destroy the spirit of subservience which has been permeating the national mind ever since the degradation and humiliation of the Thirty Years' War. And this turbid, flabby, impotent, parson's mode of thinking dares offer itself for acceptance to the most revolutionary

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

party history has ever known!' (Page 193, Third German Edition).

The State and Revolution

Page 15.

"We have already said above and shall show more fully at a later stage that the teaching of Marx and Engels regarding the inevitability of a violent revolution refers to the capitalist State. It cannot be replaced by the proletarian State (the dictatorship of the proletariat) through mere 'withering away,' but, in accordance with the general rule, can only be brought about by a violent revolution * * *"

The State and Revolution

Page 61.

"2. The Transition from Capitalism to Communism.

"Between capitalist and communist society, (Marx continues) there lies a period of revolutionary transformation from the former to the latter. A stage of political transition corresponds to this period, and the State during this period can be no other than the revolutionary dictatorship of the proletariat."

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

The State and Revolution

Page 64.

"* * * Naturally, for the successful discharge of such a task as the systematic suppression by the minority of exploiters of the majority of exploited, the greatest ferocity and savagery of suppression is required, and seas of blood are needed, through which humanity has to direct its path, in a condition of slavery, serfdom and wage labor."

The State and Revolution

Page 65

"Finally, only under Communism will the State become quite unnecessary, for there will be no one to suppress—'no one' in the sense of a class, in the sense of a systematic struggle with a definite section of the population * * *"

The State and Revolution

Page 69

"* * * While the State exists there can be no freedom. When there is freedom there will be no State."

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 8-A continued)

The State and Revolution

Page 71.

"But the scientific difference between Socialism and Communism is clear. That which is generally called Socialism is termed by Marx the first or lower phase of Communist society. In so far as the means of production become public property, the word Communism is also applicable here, providing that we do not forget that it is not full of Communism. * * *"

[Endorsed]: U. S. Ex. 8-A. Filed Dec. 7, 1939.

Mr. Hennessy: Q. Are you familiar with a book called, "'Left-Wing' Communism: An Infantile Disorder," published by the International Publishers, 381 Fourth Avenue, New York?

A. Yes.

Q. Is that book circulated by the Communist Party in the United States of America?

A. It was, at one time; but I could not place the date, because I do not think it was available in that English translation for several years after it was written.

Q. Do you remember about when it was circulated by the Communist Party of America?

A. No; I could not place the exact date.

Q. Do you think it was a couple of years after?

A. At least that. It was written in 1920. Until this edition was published there was, to my knowl-

(Testimony of William Schneiderman.)

edge, no authorized translation of this work. There were many versions of translation.

Q. Was this work used in the schools of the Communist Party?

A. It has been used recently.

Mr. Hennessy: I desire to offer this in evidence, may it please your Honor.

The Court: It may be admitted and marked.

[72]

(The document and its excerpts were marked, respectively, "Government's Exhibits Nos. 9 and 9A.")

U. S. EXHIBIT 9-A

"LEFT-WING" COMMUNISM:
AN INFANTILE DISORDER
By
V. I. Lenin

International Publishers
381 Fourth Avenue
New York
Dated: April 27, 1920.

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 9-A—continued)

"Left-Wing" Communism

Page 9

The Dictatorship of the Proletariat.

"The dictatorship of the proletariat is the most determined and the most ruthless war waged by the new class against the more powerful enemy, against the bourgeoisie, whose resistance is increased tenfold by its overthrow (even though only in one country) and whose power lies not only in the strength of international capital, in the strength and durability of the international connections of the bourgeoisie, but also in the force of habit, in the strength of small-scale production * * *"

"Left-Wing" Communism

Page 11

Bolshevism its birth and place in history.

"On the one hand, Bolshevism arose in 1903 on the very firm foundation of Marxian theory. And the correctness of this—and only this—revolutionary theory has been proved not only by the experience of all countries during the entire nineteenth century but particularly by the experience of the wanderings and vacillations, the mistakes and disappointments of revolutionary thought in Russia. For almost half a century—approximately between

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 9-A—continued)

the 'forties and 'nineties of last century—advanced thinkers in Russia, under the oppression of an unprecedented, savage and reactionary tsarism, sought eagerly for the correct revolutionary theory, following each and every 'last work' in Europe and America in this sphere with astonishing diligence and thoroughness. Russia achieved Marxism, as the only correct revolutionary theory, virtually through suffering, by a half century of unprecedented torments and sacrifice, of unprecedented revolutionary heroism, incredible energy, painstaking search and study, testing in practice, disappointments, checking, and comparison with European experience. Thanks to the emigration enforced by tsarism, revolutionary Russia, in the second half of the nineteenth century, possessed such a wealth of international connections and such excellent information about world forms and theories of the revolutionary movement as no other country in the world possessed."

"Left-Wing" Communism

Page 28

"* * * We in Russia (in the third year after the overthrow of the bourgeoisie) are taking the first steps in the transition from capitalism to socialism, or the lowest stage of communism. Everywhere, classes have remained and will remain for

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 9-A—continued)

years after the conquest of power by the proletariat. Perhaps in England, where there is no peasantry (but where, nevertheless, there are small proprietors!), the period will be shorter. The abolition of classes not only means driving out the landlords and capitalists—that we accomplished with comparative ease—it means also getting rid of the small commodity producers, and they cannot be driven out or crushed; we must live in harmony with them; they can (and must) be remoulded and re-educated, but this can be done only by very prolonged, slow, cautious organizational work * * *"

[Endorsed]: U. S. Ex. No. 9-A. Filed Dec. 7, 1939.

Mr. Hennessy: Q. I show you a book, Mr. Schneiderman, designated "Programme of the Young Communist International," published by the Young Communist League of America, 43 East 125th Street, New York City; and ask you if you are familiar with this book.

A. I am familiar with the "Programme of the Young Communist International"; I don't know if it is exactly this edition of the book.

Q. Were copies of that "Programme of the Young Communist International" used in the schools of the Young Communist League?

A. Yes, they were. The reason I make this dis-

(Testimony of William Schneiderman.)

tinction about this book is because there were many versions of the translation, and there were, at times, even distortions, among various political groups, of the translation, in order to defend a particular theory they had; that is why some of the translations varied very widely; and in some cases there were even whole sections left out or put in to defend some particular point.

Q. Can you state whether this particular translation, by the Young Communist League of America, was in general circulation among the members of the Communist Party, or used in the schools?

A. It probably was; although I do not know whether that is the authorized translation.

Mr. Andersen: I will object to that on the ground of insufficient foundation. May I, at this time, reserve an objection? The objection I would like to reserve is this: The United States Attorney has introduced in evidence the Communist Constitution of the Communist Party; and we, of course, did not have time, as these exhibits came in, to read them and study them; but, in so far as this may be an attempt by the Government to impeach any of his previous evidence and any other evidence, I desire to reserve an objection as to that particular point. May that be reserved, your Honor? [73]

The Court: It may.

Mr. Hennessy: I have no objection.

The Court: Q. What do you mean by "an authorized edition"?

(Testimony of William Schneiderman.)

A. An authorized edition is an edition which is, as far as we can judge, the most accurate translation, because those which were introduced here were originally written either in the French, Russian or German language, and they were translated for circulation.

Q. Who approves or designates the one to be used?

A. The Communist Party, because, in their judgment, they consider a certain translation is fairly accurate.

Q. Did you ever pass on any of these translations, yourself?

A. No; I did not. I am not familiar with the details of how it was worked, because that is done in the National office.

Q. Where is that?

A. In New York. My work has always been outside of New York, mainly in California. I am not familiar with the details.

Q. Weren't you a member at one time of the National Committee?

A. I am a member of the National Committee.

Q. What is the National Committee?

A. The National Committee is a committee elected at conventions for the entire Party; but, being a member of the National Committee, I am under the National directors.

Q. Tell us what this is.

(Testimony of William Schneiderman.)

A. My work has always been in some district outside of New York. This appears to be a program of the Young Communist International. Although it has the name, "Young Communist League of America," it was printed in England by a firm with which I am not at all familiar; that is why I reserved some judgment on it.

Q. Examine it and see if there is anything that you observe. You are familiar with it, generally, I take it?

A. I can give an opinion as to whether it is a program of the Young Communist [74] International; but I cannot vouch for the accuracy of the translation.

Q. We are not concerned so much with that. But tell us whether or not you know it.

A. Yes.

Mr. Hennessy: I offer it in evidence.

The Court: It may be admitted and marked.

Mr. Andersen: I object to it on the further ground that, so far as the Young Communist International is concerned, there is so far in the record no showing of any direct affiliation of the Young Communist International or Young Workers' League with the Communist Party of the United States of America or its predecessor or predecessors; there were two or three predecessors.

Mr. Hennessy: He has testified that he was a member of the Young Communist Workers; and we have a right to show what they believed.

(Testimony of William Schneiderman.)

Mr. Andersen: Unquestionably he testified to that effect, but the basis of this case, as I understand it, is an attempt to show he believed in force and violence while a member primarily of the Communist Party and its predecessors, not necessarily the Young Workers League.

Mr. Hennessy: Our theory is that, on June 10, 1927, when Mr. Schneiderman received the certificate of citizenship, he was not attached to the principles of the American Constitution, and he was a disbeliever in organized government and believed in the overthrow of capitalistic government by force and violence; and we have a right to offer in evidence that to exemplify what his state of mind was at that time, whether it be his activities before or after; he has testified that he was associated with this Young Workers League; and we want to show what this Young Workers League was and what it professed; and this is one chain of evidence that we are offering on that subject. It is not the complete chain; but it is in the chain. [75]

Mr. Andersen: I will object on the ground it is immaterial, irrelevant and incompetent. It may be that the defendant was a member of some other organization, and, as you introduce constitutions and excerpts and this and that and the other from now on, I think there should be some definite foundation laid and some definite relevancy shown prior to the admission in evidence of any particular document or any particular excerpt.

(Testimony of William Schneiderman.)

Mr. Hennessy: We have a right to show any evidence that would be relevant upon the issue, whether he was attached to the principles of the United States Constitution when he received his citizenship. We are not limited even to Communistic literature. We could show he belonged to any organization that proved that he was not attached to the principles of the United States Constitution.

The Court: I will allow it.

Mr. Hennessy: I will ask that it be marked Government's Exhibit No. 10; and the excerpt, 10A.

(The documents were marked, respectively, "Government's Exhibits Nos. 10 and 10A.")

U. S. EXHIBIT No. 10-A

PROGRAMME OF
THE YOUNG
COMMUNIST
INTERNATIONAL

Published by
Young Communist League of America,
43 East 125th Street, New York City.

Programme of the Young Communist International

Page 8.

"Two main ideas run through the programme, an understanding of which gives the key to the Young Communist movements and its principles.

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 10-A—continued.)

The first is that of the role of the youth in contemporary society; the second is that of the role of the Young Communist Leagues in the class struggle, and in the revolutionary organisations arising from this struggle."

Programme of the Young Communist International

Page 9.

"The relations between the Communist International and the Young Communist International were defined in point 14 as follows: 'The Executive Committee of the Young Communist International is organisationally connected with the Third International, and works in close harmony with it.' Again, there is nothing of leadership and subordination, but merely organisational contact and co-operation."

Programme of the Young Communist International

Pages 22-23

"The proletarian world revolution consists of a series of varied processes: purely proletarian revolutions, bourgeois democratic revolutions which grow into proletarian revolutions, national-liberation wars and colonial revolutions. All those kind

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 10-A—continued.)

of revolutions lead in their totality to the world dictatorship of the proletariat.

> " 'The social revolution can only take place in an epoch which combines civil war between the proletariat and the bourgeoisie in the advanced capitalist countries with a whole series of democratic and revolutionary movements, including national-liberation movements, among the undeveloped, backward and oppressed nations.' " Lenin."

Programme of the Young Communist International

Page 30

The Ultimate Aim of the Y. C. I.: World Communism.

"The ultimate aim of the C. I. and Y. C. I. is world Communism."

Programme of the Young Communist International

Pages 40-41

"The Y. C. L. does not limit its activity to the framework of "legality" ordained by the bourgeoisie. In its struggle against capitalism, the Y. C. L. is continually compelled to combine its open legal activity with illegal and semi-legal work and therefore to overstep the limits laid down for it by bourgeois legality."

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 10-A—continued.)

Programme of the Young Communist International

Pages 46-47.

"The Y.C.L., jointly with the C.P., puts the following tasks foremost in its anti-militarist work:

"(a) Defence of the Soviet Union aganst the attacks of the capitalists.

"(b) Active participation in the liberation struggle of the oppressed peoples against imperialism.

"(c) Revolutionary work in the bourgeois army through the organisation of nuclei, revolutionary circles and groups, i.e., work among the recruits and regular troops, among the reserves and colonial occupation troops, among organisations for military training; educational propaganda against war, militarism, and the utilisation of the army in the service of capitalism.

"(d) Struggle against the militarisation of the youth, carried on by the bourgeoisie. This militarisation is carried out in various forms, the most important of which are the measures for the military training of the youth. While in some cases the bourgeois military training of the youth is obligatory, there are cases when the bourgeoisie endeavors to conceal the true character of this militarisation, by either establishing or encouraging various so-called neutral and voluntary organisations for the military training of the youth. In the majority

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 10-A—continued.)

of cases, however, even in the case of voluntary youth organisations, economic and political pressure is brought to bear on the young people, so as to induce them to join these organisations."

Programme of the Young Communist International

Page 59.

"* * * The Communist youth must master the basic problems, the organisational principles, tactics and theory of Leninism, in order to fulfill the requirements of the class struggle fully armed with revolutionary theory."

Programme of the Young Communist International

Page 69.

"The national-liberation struggle of the oppressed peoples of the colonial and semi-colonial countries plays a tremendous role in the world revolution against capitalism. The importance of national revolutionary movements in the colonial countries lies in the fact that: (1) They directly assist the working class in the struggle against imperialism and for the international dictatorship of the proletariat, and (2) They pave the way for the Socialist revolution in the colonies."

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 10-A—continued.)

Programme of the Young Communist International

Pages 82-83

"The revolutionary youth has, till now, been the purest and brightest flame of the revolution; it will remain an inextinguishable flame in the world proletarian revolution. Marching with the Y.C.I. in the ranks of the Communist International, the toiling youth of all countries approaches the achievement of its great aim:

"The overthrow of world capitalism! The victory of world Communism! The complete emancipation of the toiling youth from the slavery of today!

We have begun the struggle! Against a world of bourgeois enemies! Against those who have betrayed our banners!

"No executioners, extraordinary tribunals or gallows can stifle our challenge. Our deeds and sacrifices will silence both the murderers and those who sneer at us.

"The iron course of history, our scientific foresight of the future, our Communist consciousness, the enthusiasm and daring determination of our youthful hearts ensure our ultimate victory.

"Young workers! Young toilers of all countries!

"Close the ranks!

"Unite under the red banner of the Young Communist International!"

[Endorsed]: U. S. Ex. No. 10-A. Filed Dec. 7, 1939.

(Testimony of William Schneiderman.)

Mr. Hennessy: Q. Mr. Schneiderman, you were an organizer of the Workers Party in 1928, were you not?

A. No; I was not an organizer of the Young Communist League, at that time.

Q. Were you not secretary?

A. I was not secretary of the Party until 1930.

Q. I show you a book purporting to be "Acceptance Speeches, William Z. Foster, Candidate for President and Benjamin Gitlow, Candidate for Vice-President Of The Workers (Communist) Party," published for the National Election Campaign Committee by Workers Library Publishers. The Workers Library Publishers was one of the agencies of the Communist Party for publishing literature, at that time, was it not?

Mr. Andersen: To which I object as calling for the opinion and conclusion of the witness. [76]

The Witness: A. I am not familiar with it.

Mr. Hennessy: Q. You never saw that book before? A. No.

Q. Were you present at the convention in 1928?

A. No.

Q. I show you a book entitled, "The Theory and Practice of Leninism," published by the Workers Party of America by The Daily Worker Publishing Company, Chicago, Illinois. Are you acquainted with the book?

A. I am familiar with the work, although I am not familiar with this particular edition.

(Testimony of William Schneiderman.)

Q. That is apparently an edition authorized by the Workers Party of America?

Mr. Andersen: To which I object as calling for the opinion and conclusion of the witness.

Mr. Hennessy: Q. Do you know?

A. I do not know. I am sure I read the work; but this particular edition I am not familiar with.

Q. Is there anything about this edition that leads you to believe that it is different from the edition that you have read?

A. I do not know. I read it, in book form, after the work was corrected and edited; I cannot vouch for this particular edition.

Q. Do you know whether or not this particular edition has been used by the Communist Party, in its literature department, for circulation of propaganda?

A. It probably was; but I could not vouch for it. I have no personal knowledge.

Q. You, personally, did not use it?

A. No.

Q. Did you observe it in the Communist Party stores? A. No.

Q. Does the Communist Party maintain bookstores?

A. Yes. The edition you have there is a very old edition,—at least, an edition of 10 or 15 years ago.

Q. Do you remember when this book was first published, Mr. Schneiderman?

(Testimony of William Schneiderman.)

A. No; I do not.

Mr. Hennessy: I would ask that it be marked for identification. [77]

The Court: It may be marked for identification.

(Document marked "Government's Exhibit 11 for Identification.")

Mr. Hennessy: Q. I show you a book designated, "The 4th National Convention, Workers (Communist) Party of America, Held in Chicago, Ill., Aug. 21-30, 1925," published by the Daily Worker Publishing Company. Are you familiar with that book and its contents?

A. No; I am not familiar with this particular convention literature.

Mr. Hennessy: I ask that that be marked for identification.

The Court: It may be marked for identification.

(Document marked "Government's Exhibit 12 for Identification.")

The Witness: Might I return, for a moment, to a previous book? You introduced "The Theory and Practice of Leninism"?

Mr. Hennessy: Q. Yes?

A. One of the reasons I cannot vouch for this particular book is that I see the name of the author is misspelled. His name is Joseph Stalin, and this particular pamphlet reads "By I. Stalin." Any book that makes a mistake like that, I certainly would not vouch for its correctness.

(Testimony of William Schneiderman.)

Q. Mr. Schneiderman, I show you a book designated, "The Second Year of the Workers Party of America," published by the Literature Department, Workers Party of America, 1009 North State Street, Chicago, Illinois; and ask you if you are familiar with that book and its contents.

A. No; I am not.

Mr. Hennessy: I ask that this be marked for identification.

The Court: It may be marked.

(Book marked "Government's Exhibit 13 for Identification.")

Mr. Hennessy: I would like to offer this book for identification. This is one Mr. Schneiderman could not identify. It is, "Acceptance Speeches By William Z. Foster, Candidate for President, and Benjamin Gitlow, Candidate for Vice President, of the Workers Communist Party."

The Court: It may be marked for identification.

[78]

(Acceptance Speeches marked "Government's Exhibit 14 For Identification.")

Mr. Hennessy: Q. Mr. Schneiderman, I show you a book designated, "The Platform of the Class Struggle; National Platform of the Workers (Communist) Party," purporting to be issued by the National Election Campaign Committee of the Workers (Communist) Party in 1928; and ask you if you are familiar with that book and its contents.

A. No; I am not.

(Testimony of William Schneiderman.)

Q. Were you familiar with the platform of the Workers Communist Party in 1928?

A. As I understand, this was the election platform adopted for the Presidential election.

Q. Yes?

A. I am, of course, familiar with the general program of the party; but this particular platform was adopted at a convention which I did not attend, and I was not familiar with the decisions of that particular convention.

Q. Did you approve the platform at that time?

Mr. Andersen: To which I will object as immaterial, irrelevant and incompetent.

The Court: It may or may not become material. He may answer.

Mr. Hennessy: I am asking what his views were, whether he approves a certain platform.

The Witness: A. As I stated, I was in agreement with the general program and principles of the Party at that time; but I am not familiar with the particular platform which was adopted at the convention, which I did not attend.

Mr. Hennessy: Q. You subsequently read the platform, did you not?

A. No; I do not recall that I did. This platform was adopted at a convention where certain individuals were in the leadership of the Party whom I did not approve of and who were subsequently expelled, including the general secretary at that time,—J. Lovestone.

(Testimony of William Schneiderman.)

The Court: Q. What year was that?

A. 1928. That is why I say I cannot vouch for that particular platform. [79]

Mr. Hennessy: I ask that that be marked for identification.

The Court: It may be marked.

(Document marked "Government's Exhibit 15 For Identification.")

Mr. Hennessy: Q. I show you a book entitled, "A. B. C. of Communism," by N. Bucharin and E. Preobraschensky, published by Lyceum-Literature Department, Workers Party of America, Room 405, 799 Broadway, New York City; and ask you if you are familiar with this book, Mr. Schneiderman. A. Yes, I am.

Q. Do you remember when that book came out?

A. No; I could not remember the exact year; but it must have been somewhere between 1920 and 1924.

Q. Was that book used by the Communist Party, in the extension of its propaganda?

A. I do not know whether it was; because this book was never accepted as an authorized version, and it was subsequently barred from use in all of our schools and open forums and discussions.

Q. Do you remember when it was barred?

A. No. I could check upon that. The authors and the editors were not entirely in agreement with the theoretical position of the Communist Party on several questions; and this book was

(Testimony of William Schneiderman.)

barred, and, later, the authors and editors were expelled from the Communist Party—That is, not from the Communist Party of America, but from the Communist Party of Russia.

Q. This book apparently was issued under the auspices of the Workers Party of America, was it not? A. I do not know.

Mr. Hennessy: I ask that it be admitted and marked.

The Court: It may be admitted and marked for identification.

(Document marked "Government's Exhibit No. 16 For Identification.")

Mr. Hennessy: Q: I show you a book designated: "The International of Youth, Organ of the Executive Committee of the Young Communist International," published by International Publishing [80] House of the Young Communist International, c/o Young Communist League, 38 Great Ormond Street, London, W. C. 1. Are you familiar with this book?

A. This is a periodical magazine, which I believe was a quarterly at that time.

Q. When was that issued, if you know?

A. I would not recall the exact date; probably before 1925. I have read some of the issues of this particular magazine; but I could not vouch for having read this particular one.

Mr. Hennessy: I would ask that this be marked for identification.

(Testimony of William Schneiderman.)

The Court: It may be marked.

(Document marked "Government's Exhibit 17 For Identification.")

Mr. Hennessy: Q. I show you a book designated, "Why Communism? Plain Talks on Vital Problems," by M. J. Olgin, apparently issued by the Workers Library Publishers, New York; and ask you if you are familiar with that book, Mr. Schneiderman.

A. This book was published while I was out of the country; and I do not recall ever having read it.

Q. You are not familiar with it, then?

A. I have heard of the book and read about it; but I do not believe I ever read it, because at the time it was being circulated by the Party I was not in the country at the time.

Q. Was it circulated by the Party?

A. I believe so.

Mr. Hennessy: Then, I offer it in evidence.

Mr. Andersen: To which we will object on the ground it is irrelevant, incompetent and incompetent; no proper foundation laid. The mere fact that the Communist party may have circulated this particular piece of literature does not mean that this particular document would advocate force and violence. I am not familiar enough with the document to know what it does state; but I doubt very much whether it does refer to force and violence. Let us assume it does: Merely because they distributed literature does not [81] mean that they advocated

(Testimony of William Schneiderman.)

violence, within the allegation of the complaint on file.

Mr. Hennessy: Under the decisions, if a man is a member of an organization and his state of mind is the issue, we have a right to show just what that organization taught and advocated; and certainly so when a man was an officer of the organization, such as Mr. Schneiderman was.

Mr. Andersen: To which I object. There is no foundation to that very statement that Mr. Hennessy has made.

Mr. Hennessy: That is what the decisions hold.

The Court: I will allow it, subject to your motion to strike and over your objection.

(Document marked "Government's Exhibit No. 18"; and the excerpt, "18A.")

U. S. EXHIBIT No. 18-A

WHY COMMUNISM?

By M. J. Olgin

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Why Communism?

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"We Communists say that there is one way to abolish the capitalist State, and that is to smash

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 18-A continued.)

it by force. To make Communism possible the workers must take hold of the State machinery of capitalism and destroy it."

Why Communism?

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"If this fight has been carried on with sufficient determination, the ground is prepared for action when war comes. The workers do not realize that it is in their power to postpone war. It is. Workers in ammunition plants, go on strike! Shut down your plants! Prevent governmental strike-breakers from resuming work! Railroad men, refuse to handle war materials or to transport troops! Keep guard over your railroad yards and depots lest transportation facilities be used by governmental agents. Marine workers, do not load either men or ammunition! Truck drivers, refuse to assist in war work! Workers of other industries, help the strikers. Farmers, refuse to give your foodstuffs and raw materials to be used for the slaughter!

"If the workers rise in this way against war, the capitalists with their armed forces will try to break the deadlock. There will be attacks on strikers. The workers will have to offer resistance. We Communists do not close our eyes to the fact that this means civil war. But when the masses are organ-

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 18-A continued.)

ized and fight in great numbers under revolutionary leadership the victory is assured. Part of the army is certain to waver and to join the people. There may be victims, but their number can not be compared to the losses in life and limb that the workers would suffer in the imperialist war.

"Victory in the civil war spells the doom of the capitalist State.

"We Communists do not say to the workers that they have to begin the civil war today or tomorrow. We say that the civil war is the inevitable outcome of long and arduous struggles against the capitalists and their State and that these struggles must be made the every-day practice of the working class."

Why Communism?

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"This government has the great task of taking away from the owners the plants, factories, railroads, banks and turning them into public property to be administered by the workers for the common benefit of all. In other words, it is the task of the Soviets to abolish private property in the means of production and to establish Socialist production and distribution.

"This cannot be accomplished peacefully. The exploiters won't give up their loot even after their

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 18-A continued.)

State power is crushed. They will have to be routed. The Soviet government will have to expropriate the expropriators by force. The latter will conspire and plot against the new system; they will organize counter-revolutionary uprisings. The Soviet State will have to crush these with an iron hand. The former exploiters will be given no quarter. * * *"

Why Communism?

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VI

The Revolutionary Overthrow of Capitalism and the Dictatorship of the Proletariat

"The overthrow of the State power, and with it, of the capitalist system, grows out of the everyday struggles of the workers. One is historically inseparable from the other.

"As the organization of the workers grows, as their struggles become fiercer, while many non-proletarian elements like farmers, intellectuals, and oppressed members of the lower middle class join the revolutionary movement, the final ouslaught on the fortress of capitalism draws nearer. These struggles are the reaction of the masses to the misery wrought by the crisis of capitalism. The capitalists try to overcome the crisis by putting additional burdens on the shoulders of the masses,

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 18-A continued.)

but they cannot cure the incurable disease. There comes a time when large sections of the population say that this simply 'cannot go on'. The government seems to be entirely incompetent to cope with the political and social difficulties. The belief of the population in the wisdom and all-powerfulness of the 'men higher up' is shaken. These men are losing their confidence. The confidence of the masses in their own strength is growing apace. The struggles of the masses meanwhile become broader and deeper. The government tries suppression. It does not succeed in crushing the spirit of revolt. It cannot stem the tide. The previous struggles of the workers count greatly. The clearer the class-consciousness of the workers, the more steeled they are in fighting, the better the revolutionary leadership they have developed in the cou e of years (the Communist Party), the greater the number of friends they have allied with themselves from among the other oppressed classes, the more capable are they to deal the final blow.

"It is not necessary that this final blow, i.e., the revolution, should come in connection with an imperialist war, although this is very likely. Capitalism will seek to prevent a revolution by plunging the country into war. War is to serve not only as a way out of the crisis but as a means to arouse the patriotism of the masses, to increase governmental terror (martial law), and to divert public attention from internal affairs. War, under such conditions,

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 18-A continued.)

for a while retarding the revolutionary movement, may hasten it later when the war sufferings begin to tell on the masses.

"A time comes when there is demoralization above, a growing revolt below; the morale of the army is also undermined. The old structure of society is tottering. There are actual insurrections; the army wavers. Panic seizes the rulers. A general uprising begins.

"Workers stop work, many of them seize arms by attacking arsenals. Many had armed themselves before as the struggles sharpened. Street fights become frequent. Under the leadership of the Communist Party, the workers organize Revolutionary Committees to be in command of the uprising. There are battles in the principal cities. Barricades are built and defended. The workers' fighting has a decisive influence with the soldiers. Army units begin to join the revolutionary fighters; there is fraternization between the workers and the soldiers, the workers and the marines. The movement among the soldiers and marines spreads. Capitalism is losing its strongest weapon, the army. The police as a rule continue fighting, but they are soon silenced and made to flee by the united revolutionary forces of workers and soldiers. The revolution is victorious."

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 18-A continued.)

Why Communism?

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"* * * In other words, while the Socialists solicit votes in order to reform the State and thereby to make it more effective for the capitalists, we Communists practice revolutionary parliamentarism by which is meant strengthening the working class and weakening its enemies. We go to the law-making institutions, not to tinker them up for the benefit of the capitalists, but to be a monkey wrench in their machinery, preventing it from working smoothly on behalf of the masters. We use, while there, every step of those agents of the capitalists to expose them before the people, to show what these so-called representatives of the people and what all these so-called democratic institutions actually are."

Why Communism?

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"Hand in hand with the Communist Party and under its guidance functions the Young Communist League, the revolutionary organization of the young workers. Many other organizations function under the guidance of and in close cooperation with the Communist Party.

"There is a Communist Party in every country of the world. All of them work for the same end, and

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 18-A continued.)

all of them adapt their activities to conditions existing in their country. Delegates from each Communist Party gather once in a few years to an international Communist Congress (there have been six of them so far). The Congress meets for two or three weeks and discusses thoroughly the international situation and the situation in every country. Experiences of a world-wide struggle are shared and a general line of further struggles mapped out. The Congress elects an Executive Committee which is the leading body between one congress and the other. The decisions of the Executive Committee of the Communist International guide the activities of the parties. The Executive Committee meets at intervals of a few months. Its meetings very much resemble a small congress. Between one meeting and the other a smaller body called Presidium is conducting the affairs of the organization. The organization is called the Communist International and expresses the common purpose and common decisions of all the Communist Parties of the world. The Communist International (Comintern) gives unity of policy and leadership to the entire revolutionary movement of the world. It is the general staff of the world revolution of all the exploited and oppressed.

"The Communist Party of the Soviet Union is affiliated with the Communist International. It is the most influential but not the only influential

(Testimony of William Schneiderman.)

(U. S. Exhibit No. 18-A continued.)

Party in the International. It is one part but not the whole of the International. Its advice is highly precious because it has long accomplished what the Communist Parties of the world are only striving at—the proleterian revolution. The advice and experiences of the other Parties, however, are also of great value in determining the policies of the Comintern. The seat of the Comintern is Moscow because this is the capital of the only workers' and peasants' government in the world, and the Comintern can meet there freely. As the workers become the rulers of other countries, the Comintern will not have to confine its meetings to Moscow alone.

"The Communist Party of the U. S. A. is thus part of a world-wide organization which gives it guidance and enhances its fighting power. Under the leadership of the Communist Party the workers of the U. S. A. will proceed from struggle to struggle, from victory to victory, until, rising in a revolution, they will crush the capitalist State, establish a Soviet State, abolish the cruel and bloody system of capitalism and proceed to the upbuilding of Socialism.

"This is why every worker must join the Communist Party."

[Endorsed]: U. S. Ex. No. 18-A. Filed Dec. 7, 1939.

(Testimony of William Schneiderman.)

Mr. Hennessy: Q. I will show you a book designated, "New Frontiers For the Pioneers of 1937"; and ask you if you are familiar with this particular issue? A. No.

Mr. Hennessy: I would ask that this be marked for identification.

The Court: It may be marked.

(Document marked "Government's Exhibit 19 For Identification.")

The Court: We will take a recess for a few minutes.

(After Recess)

Mr. Hennessy: Q. Mr. Schneiderman, I show you a letter purporting to be signed, "Wm. Schneiderman," dated September 10, 1925; and ask you if that is your signature. A. Yes, it is.

Mr. Hennessy: I desire to offer this in evidence. The contents of the letter are of no particular moment. I just want to establish that, on the 10th of September, 1925, Mr. Schneiderman was city central secretary of the Workers Party of America.

Q. That is a fact, is it not?

A. Yes. [82]

Mr. Hennessy: I ask that it be marked Government's Exhibit No. 20.

(Letter marked "Government's Exhibit No. 20.")

Mr. Hennessy: Q. I show you another letter, dated June 13, 1928; and ask you if that is your signature.

(Testimony of William Schneiderman.)

A. No; this is written by, I believe, the stenographer; I believe the signature was written in by my stenographer, because her initials are underneath.

Q. Was it authorized by you.

A. It probably was.

Q. Were you, at that time, on the 13th of June, 1928, the district organizer of the Young Workers Communist League of America?

A. Yes, sir.

Mr. Hennessy: I offer it in evidence for the purpose of showing the fact that, on the 13th of June, 1928, Mr. Schneiderman was the district organizer of the Young Workers Communist League of America.

The Court: It may be admitted and marked.

(Letter marked "Government's Exhibit No. 21.")

Mr. Hennessy: Q. I show you a letter dated December 18, 1929, Mr. Schneiderman, which purports——

Mr. Andersen: I will stipulate, without using the document, that on that date he did have that position.

Mr. Hennessy: I would like to offer it in evidence just to have the documentary evidence.

Mr. Andersen: I thought we might save a lot of time and not clutter up the record.

Mr. Hennessy: Q. Is that your signature?

A. That is a facsimile of my signature; that is a rubber stamp.

(Testimony of William Schneiderman.)

Q. Was that authorized by you,—that letter?

A. I presume so. There is no indication of who put on the rubber stamp.

Q. So, on the 18th of December, 1929, you were district organizer for District 13 of the Communist Party of the United States of [83] America?

A. Yes.

Q. You had your office——

Mr. Andersen: I assume it may be stipulated that you are introducing these letters in evidence for that limited purpose, and that the contents may not be deemed in evidence?

Mr. Hennessy: That is the purpose; but the whole letter is in evidence; there is no question about that.

The Witness: I want to correct the previous statement. This is not "district organizer." This is "district organization department."

Mr. Hennessy: Q. What is the meaning of the "district organization department"?

A. I was the organization secretary that handled the records; and the department under me took care of the membership records.

Q. For District 13? A. Yes.

Mr. Hennessy: I offer this in evidence.

The Court: It may be admitted and marked.

(Letter was marked "Government's Exhibit No. 22.")

(Testimony of William Schneiderman.)

Mr. Hennessy: Q. I show you a letter dated January 30, 1930, purporting to be signed, "W. Schneiderman, Dist. Org. Secy, Dist. #13"; and ask you if that is your signature. A. Yes.

Q. What is the meaning of that, "Dist. Org. Secy, Dist. #13," underneath?

A. "District Organizational Secretary."

Q. You were, on the 30th of January, district organizer secretary of District 13 of the Communist Party of the United States of America?

A. Yes.

Q. You had your office at 145 Turk Street?

A. Yes.

Mr. Hennessy: Your Honor, I ask that this be received in evidence.

The Court: It may be marked.

(Letter marked "U. S. Exhibit No. 23.")

Mr. Andersen: With respect to those last exhibits, may it [84] please the Court, may a motion to suppress those exhibits be avilable to the defendant at a later stage of this proceeding, as I am informed that those letters were stolen in a raid on the headquarters of the Communist Party in Los Angeles and an actual burglary was committed——

Mr. Hennessy: By whom?

Mr. Andersen: The man has been caught now, I believe.

Mr. Hennessy: Not by any Federal agent?

(Testimony of William Schneiderman.)

Mr. Andersen: That is really a question, also. I believe that an examination might possibly bring it out; and I believe the man is in court who actually burglarized the headquarters of the Communist Party in Los Angeles and stole a great deal of documents; so, with the privilege of the Court, we would like to reserve a motion to suppress the evidence, on that ground.

Mr. Hennessy: Of course, we resist it at this time. There is nothing before the Court.

The Court: Proceed.

Mr. Hennessy: Q. Mr. Schneiderman, I show you a letter dated January 30, 1930, purporting to be signed by Wm. Schneiderman; and ask you if that is your signature. A. Yes, it is.

Q. And at that time, namely, January 30, 1930, you were district organizer secretary of District #13 of the Communist Party of the United States of America? A. Yes.

Q. And you had your office at 145 Turk Street, San Francisco? A. Yes, sir.

Mr. Hennessy: I will offer it in evidence.

The Court: It may be admitted and marked.

Mr. Andersen: To which I object, on the ground that this evidence has been illegally procured. Might I ask this witness, on voir dire, to establish the point?

The Court: You will have an opportunity to cross-examine him when the time comes. [85]

Mr. Andersen: May a motion to strike be reserved?

(Testimony of William Schneiderman.)

The Court: It may go in, subject to your motion to strike.

(Letter was marked "Government's Exhibit No. 24.")

Mr. Hennessy: Q. Mr. Schneiderman, I show you a letter dated January 30, 1930, purporting to be signed "W. Schneiderman"; and ask you if that is your signature. A. Yes, it is.

Q. Were you, at that time, organizer secretary of District #13 of the Communist Party of the United States of America? A. Yes.

Q. You had your office at 145 Turk Street, San Francisco? A. Yes.

Mr. Hennessy: We offer that in evidence.

Mr. Andersen: We object to that going in evidence, on the same grounds as heretofore; and the same reservation.

The Court: The same ruling. It may be admitted.

(Letter marked "Government's Exhibit No. 25.")

Mr. Hennessy: Q. Mr. Schneiderman, you were a candidate, in the 1936 election, for presidential delegate, in California, for the Communist party of the United States of America?

A. I believe I was.

Q. And previously, had you been a candidate for any public office of the Communist Party of the United States of America?

A. Yes; I was candidate for Governor in the State of Minnesota in 1930.

(Testimony of William Schneiderman.)

Q. Were you a candidate any other place for office in the Communist Party of the United States of America?

A. No. I possibly might have been a presidential elector at some of the presidential elections; but that was more or less a routine matter, and I do not recall.

Mr. Hennessy: Take the witness.

Mr. Andersen: No questions at this time. [86]

MILES G. HUMPHREYS,

called by the United States; sworn.

Direct Examination

Mr. Hennessy: Q. Where do you live, Mr. Humphreys? A. 804-21st Street, Oakland.

Q. What is your business or occupation?

A. Unemployed.

Q. What was your last employment?

A. Business representative of the union.

Q. What union was it?

A. Local 96; Oakland Industrial Union No. 96.

Q. Were you a member of the Communist Party of the United States of America?

A. Yes, I was.

Q. When did you first join the Communist Party of the United States of America? A. In 1924.

Q. Where did you join?

A. Oakland, California.

(Testimony of Miles G. Humphreys.)

Q. How long did you continue to be a member of that party after you first joined it?

A. About three years, at that time.

Q. That is, until about 1927? A. Yes, sir.

Q. Then did you leave Oakland?

A. I left Oakland and went to Russia in 1926.

Q. Did you go on a transfer from the Communist Party of America at Oakland? A. Yes, sir.

Q. You still continued to be a member of the Party, but you simply took a transfer? A. Yes.

Mr. Andersen: To which I will object as the conclusion and opinion of the witness; if there was such a transfer, in writing, the statement of the witness is not the best evidence.

Mr. Hennessy: He is a member of the Party; and he took a transfer, and I think he can testify to the fact.

Mr. Andersen: There is nothing before the Court in the first place that it is possible to do such a thing as transfer.

Mr. Hennessy: I will ask the witness: [87]

Q. Did you transfer?

A. I received a transfer from the secretary of the Workers Communist Party of the United States to the Russian Communist Party.

Mr. Andersen: I will move that the answer be stricken out on the ground that it is not the best evidence. Obviously, if it is in writing, that is not the best evidence.

Mr. Hennessy: I submit he stated he received a transfer.

(Testimony of Miles G. Humphreys.)

Mr. Andersen: That would be his conclusion as to the contents of the writing.

The Court: I do not know whether it was a writing or not. You may develop that.

Mr. Hennessy: I will ask him the question:

Q. When you left Oakland and went to Russia, what did you do in regard to having a transfer of your connection with the Communist Party of the United States of America?

Mr. Andersen: I will object to that question as complex and leading and suggestive.

Mr. Hennessy: I am asking what he did.

The Witness: A. I applied to the district office of the Communist Party here in San Francisco, and they referred my application to the national office at Chicago; and I received a silk certificate of transfer to the Russian Communist Party at New York City the day before I went.

Mr. Andersen: The witness's testimony shows that, whatever it was, it was in writing.

Mr. Hennessy: Q. Have you got the writing?

A. I took the silk certificate to Russia, and turned it in to the Russian Communist Party in Russia.

Q. You have not got the silk certificate?

A. No.

The Court: Is that a complete answer as to the writing?

Mr. Andersen: To the writing, yes.

(Testimony of Miles G. Humphreys.)

Mr. Hennessy: Q. How long did you remain in Russia? A. Eight [88] months.

Q. Then what did you do?

A. I returned to the United States.

Q. To what place in the United States?

A. New York City.

The Court: Q. How long did you say you stayed in Russia? A. Eight months.

Q. When you returned to the United States, at New York City, did you continue your affiliation with the Communist Party of the United States of America?

A. I was dropped for nonpayment of dues.

Q. Did you subsequently apply for reinstatement to the Communist Party of the United States of America? A. I did. I believe it was in 1931.

Q. Where. A. New York City.

Q. Were you reinstated in the Party?

A. I was.

Q. How long did you continue a member of the Communist Party after reinstatement in 1931?

A. I quit paying dues in December; I paid dues for December, 1936, and I paid no dues since then. In April or May, I turned my book in to the Communist Party—1937.

Q. April or May of 1937? A. Yes, sir.

Q. As I understand, then, you joined the Communist Party of the United States of America, in Oakland, in 1924, was it?

A. It was then Workers Communist Party.

(Testimony of Miles G. Humphreys.)

Q. It was then known as Workers Communist Party? A. Yes, sir.

Q. But the organization is identical with the Communist Party of the United States of America?

A. The same organization.

Q. Except the name had been changed?

A. Yes.

Q. When you first joined the Workers Communist Party in Oakland, did you make any study of the principles of the Workers Communist Party, at that time in 1924? A. I did.

Q. Of what did your study consist?

A. It consisted of classes and the study of A. B. C. of Communism, the structure of the Communist Party—that is, the workings of the Communist Party; tactics and strategy. [89]

Q. You say you studied the book known as "A B C of Communism"? A. Yes, sir.

Q. I show you this book here, being Government's Exhibit 16 for Identification, and ask you if this is the book, "A B C of Communism," by N. Bucharin and E. Preobraschensky, that you studied when you were studying Communism.

A. This book was used as a textbook, in teaching classes.

Q. By the Workers Communist Party?

A. By the Workers Communist Party.

Q. What year was that?

A. 1924 and 1925.

Mr. Hennessy: I desire to offer this book in evidence.

(Testimony of Miles G. Humphreys.)

Mr. Andersen: The same objection heretofore made: insufficient foundation.

The Court: In what respect is the foundation laid for identifying it?

Mr. Hennessy: He said it was used in classes by the Workers Communist Party when he was a student and became a member of the Communist Party; it is part of their curriculum, in their schools.

Mr. Andersen: There is no testimony before the Court at this time that any of these classes of the defendant, in the first place, were under their auspices.

Mr. Hennessy: He has testified they were.

The Court: Q. Whose classes were these; who conducted these classes?

A. The classes were conducted by the Workers Communist Party, under James Dolson.

Mr. Hennessy: Q. And were under the auspices of the Workers Communist Party at that time?

A. Yes.

Mr. Andersen: I move that be stricken as the conclusion and opinion of the witness.

The Court: He is stating what the fact is.

Mr. Andersen: He is not stating what the fact is. He is stating as to what his conclusion was, as to what organization, if [90] any, had the direct supervision of this particular school or class.

The Court: The question and answer may stand.

Mr. Hennessy: I asked that it be marked as an exhibit.

(Testimony of Miles G. Humphreys.)

The Court: It may be admitted and marked.

(Document marked "Government's Exhibit No. 16"; and the excerpt, "16A.")

U. S. EXHIBIT NO. 16-A

A B C
OF
COMMUNISM
By
N. Bucharin
E. Preobrazchensky
Translated by P. Lavin

Published by Lyceum-Literature Department
Workers Party of America
Room 405 799 Broadway, New York City.

The A B C of Communism

Page 56.

"* * * The basis of the Communist form of society is common ownership of the means of production and distribution of wealth—that is, the ownership and control by society of machinery, locomotives, steamships, factories, warehouses, granaries, mines, telegraphs and telephones, land, etc. Neither one capitalist, nor a league of capitalists, will have the right to dispose of the means of life. That right will belong to society as a whole

(Testimony of Miles G. Humphreys.)

(U. S. Exhibit No. 16-A continued.)

—that is to say, not merely to one class, but to all those who make up society. In such conditions society will be a great association of comrades and workers * * *"

The A B C of Communism

Page 59.

"Administration Under Communism.

"There will be no classes in the Communist society. Now, when there are no classes there will be no State. We said before that the State is an organ of class domination; it has always been used by one class against another. If the State is a bourgeois one, it is used against the proletariat; if it is a proletarian one, it is used against the bourgeoisie. In the Communist society, however, there will be no landowners, no capitalists, no wage-workers: there will be simply human beings, comrades * * *"

The A B C of Communism

Page 60

"It is self-evident that this will be the condition of society when the Communist order has been developed and strengthened; when the complete and final victory of the proletariat has been achieved. This condition will not prevail, however, imme-

(Testimony of Miles G. Humphreys.)

(U. S. Exhibit No. 16-A continued.)

diately after the proletarian victory. The working class will have to wage a prolonged struggle against all their enemies—above all, against the evil inheritance of the past idleness, carelessness, crime, vanity. Two or three generations will have to grow up under the new conditions before laws and punishments will cease to be, before the power of the working class State will be unnecessary, before all traces of the capitalist past will disappear. The proletarian State is necessary till, in the fully-developed Communist system there is left no trace of Capitalism. The proletarian State will disappear with the last remnants of the capitalist system. The proletariat and all other classes will be united into one because all will gradually be trained in the common work. After twenty or thirty years a new world will appear in which there will be other men and other manners."

The A B C of Communism

Pages 65-66

2. "The Dictatorship of the Proletariat".

"In order to bring into being the Communist system of society the proletariat must have all power in their hands. They cannot destroy the old order so long as they do not possess this power. In order to accomplish their task they must become the rul-

(Testimony of Miles G. Humphreys.)

(U. S. Exhibit No. 16-A continued.)

ing class in the State. It goes without saying that the bourgeoisie will not surrender their position without a fight. For them Communism means the loss of privilege and of place, the loss of "freedom" to coin money from the blood and sweat of the workers, the loss of rent, interest and profit. The Communist revolution, therefore, will meet with the fiercest opposition from the exploiters. The task of the dominant working class, therefore, consists in the merciless suppression of this opposition. As the resistance of the exploiters will inevitably be strong, therefore the rule of the proletariat will have to be a dictatorship. In a "dictatorship" there is a strong form of government, and men must agree to a high degree of resoluteness in the work of suppressing an enemy. It is evident that in such a situation there can be no talk of "freedom" for everybody. The dictatorship of the proletariat is incompatible with the freedom of the bourgeoisie. The dictatorship is, in fact, necessary to deprive the bougeoisie of their freedom, to chain them hand and foot in order to make it absolutely impossible for them to fight the revolutionary proletariat. The more stubborn the resistance of the bourgeoisie is, the more desperately they muster their strength, the more dangerous they become; the harsher and more bitter must be the proletarian dictatorship, which in an extreme case dare not cease till the terror is overcome. Only after the complete over-

(Testimony of Miles G. Humphreys.)

(U. S. Exhibit No. 16-A continued.)

throw of the exploiters and the crushing of their resistance; when it is no longer possible for them to injure the working class; only then will the dictatorship of the proletariat become milder. The bourgeoisie will gradually be merged in the proletariat, the workers' State will gradually die away, and society will become a Communist society in which there will be no class divisions."

The A B C of Communism

Page 69

"The revolution, therefore, destroyed the old power and created a new one. As a matter of course, the new power retained some features of the old but put them to another use. The conquest of the power of the State, therefore, is not the capture of the old organization, but the creation of a new one—the organization of that class which has conquered in the fight."

The A B C of Communism

Page 109.

"* * * Marx was a believer in civil war—that is, the armed struggle of the proletariat against the bourgeoisie."

(Testimony of Miles G. Humphreys.)

(U. S. Exhibit No. 16-A continued.)

The A B C of Communism

Page 120.

"The Communist Revolution can triumph only as a world revolution."

The A B C of Communism

Page 135.

"The Third International assumed the name of the Communist International, just as the organization at whose head was Karl Marx himself, was called the Communist League. Its every act shows that it walks in the footsteps of Marx, that is, on the revolutionary pathway that leads to the forcible overthrow of the Capitalist system of society."

[Endorsed]: U. S. Ex. No. 16-A. Filed Dec. 7, 1939.

Mr. Hennessy: Q. How long did you attend this classes, Mr. Humphreys?

A. I would say, about two months.

Q. Did you occupy any position in the Workers Communist Party?

A. Not while I was going to the school.

Q. After you finished your studies?

(Testimony of Miles G. Humphreys.)

A. I became a branch organizer and taught some classes, myself.

Q. What was the designation of the teacher: educational director? A. Yes, sir.

Q. What was your designation when you taught classes? A. I was a branch organizer.

Q. When you taught these classes, whom did you teach? A. Communist Party members.

Q. And did you receive any instructions from anybody as to what you should teach?

A. I attended the class before; and the class was for the purpose of teaching teachers. Mr. Dolson was the district organizer, and he taught myself and others to teach from this book.

Q. From what book?

A. The "A B C Of Communism."

Q. When you taught, what book did you use to teach from?

A. The "A B C Of Communism."

Q. When you went to school, were you taught by the instructor what the objectives and aims of the Workers Communist Party were at that time?

A. Naturally, he enlarged upon the subject matter contained in the book.

Mr. Andersen: I move that be stricken as mere hearsay and being the conclusion and opinion of the witness. [91]

Mr. Hennessy: It is not hearsay. I am asking what he was doing.

Mr. Andersen: Again, it is hearsay and calls for his conclusion.

(Testimony of Miles G. Humphreys.)

The Court: Q. Do you know what they were taught?

A. Yes.

Q. You may state what it was.

A. I was taught, from "A B C of Communism," the application of this pamphlet to the program and tactics of the Communist Party, and the objects of the Communist Party.

Mr. Hennessy: Q. Were you taught what the principles of the Workers Communist Party were at that time? A. Yes.

Q. What were you taught?

Mr. Andersen: I should like to have the foundation laid as to time and place and by whom.

Mr. Hennessy: Q. When were you a pupil over there? A. What is that?

Q. When was that that you were a pupil?

A. In 1924.

Q. Do you remember the month?

A. I joined the Communist Party—I believe it was in March or April; and it was probably June or July.

Q. Who was your instructor?

A. James Dolson.

Q. Whereabouts were these classes held?

A. Held in a little restaurant on Seventh Street in Oakland; Seventh and Washington, I believe.

Q. Now, at that time, you were taught by this instructor the principles of the Workers Communist Party, were you? A. Yes, sir.

(Testimony of Miles G. Humphreys.)

Q. What were you taught, again?

Mr. Andersen: I desire to make the further objection there is no foundation laid to show that Mr. Dolson was a person competent or authorized to teach by the organization.

Mr. Hennessy: He has testified he was.

Mr. Andersen: Again, it is only his conclusion.

[92]

The Court: He may answer.

The Witness: A. The classes in instruction taught that the Workers of the Communist Party of America, who are a section of the Communist International——

Mr. Hennessy: Q. (Interrupting) Was the Communist International the worldwide party, having headquarters at Moscow? A. Yes, sir.

Mr. Andersen: I move that be stricken.

The Court: He may state what it is.

The Witness: A. It is affiliated with the Communist International—and that the program was to organize the workers and educate the workers in the United States; and that this organization would lead to the overthrow of the existing system of society and establishment of a socialistic system of society,—otherwise, a Soviet system of government under the dictatorship of the proletariat.

Mr. Hennessy: Q. You said it would result in the establishment of the Soviet system of government. Were you told, at that time, what the Soviet

(Testimony of Miles G. Humphreys.)

system of government would consist of, what would be the nature of the government? A. Yes.

Q. What were you told?

A. That the nature of this government would be: the workers would be formed into committees, the same as they were in Russia; and that these committees would be—the government representatives from this committee would form the higher Soviet committees; and it would be a committee of the Soviet form of government.

Q. You stated that this program would result in a dictatorship of the proletariat? A. Yes.

Q. What did they tell you was meant by the "dictatorship of the proletariat"?

Mr. Andersen: We object—— [93]

Mr. Hennessy: Q. What did this school of Communism teach, with regard to the meaning of the term "dictatorship of the proletariat"?

Mr. Andersen: Again, I wish to make the further objection that this, again, is merely a conclusion of the witness as to what they might have taught, at that time. Again, I want to direct to the Court's attention that that is 15 years ago.

Mr. Hennessy: It is not very long before Mr. Schneiderman applied for his citizenship; about three years.

The Court: I will allow it.

The Witness: A. The "dictatorship of the proletariat," was the dictatorship of the working class over all other classes, led by the Communist Party.

(Testimony of Miles G. Humphreys.)

Mr. Hennessy: Q. Were you taught, at that time, anything in regard to the abolition of private property?

Mr. Andersen: To which I will object as immaterial, irrelevant and incompetent; whether private property is abolished or not is immaterial, so far as this proceeding is concerned; there is nothing in the law or Constitution of the United States and there is nothing charged in the complaint on file regarding the so-called abolition of private property.

Mr. Hennessy: I disagree with you on that. One of the primary purposes of the Constitution was to protect not only life and liberty but also property. The fifth amendment to the Constitution prohibits private property being taken without due process of law and without just compensation. I propose to show that the program of the Communist Party contemplates the expropriation of private property without any compensation and the establishment of a class government, as opposed to the representative government under which we live; and I think the question is very pertinent.

The Court: The witness may answer. [94]

The Witness: A. The program of the Communist Party, from its very inception, was for the abolition of private property and socializing of all property; and that was taught in the classes and in the literature.

Mr. Hennessy: Q. Did they teach you how that

(Testimony of Miles G. Humphreys.)

private property would be expropriated by the workers' government without compensation?

A. Yes.

Mr. Andersen: May it please the Court, we object to counsel asking leading questions. In every question he has asked: "did they teach this or didn't they teach that?"

Mr. Hennessy: No; I did not. I said: "Did they teach?" He can state "Yes" or "No."

Mr. Andersen: That is suggesting an answer.

Mr. Hennessy: The question was not suggestive. I asked the question; and he could have said, "No," if they did not teach him; and he could have said, "Yes," if they did teach him.

The Court: Proceed.

Mr. Hennessy: Q. Did they teach you that the capitalistic government would be abolished?

Mr. Andersen: Same objection: immaterial, irrelevant and incompetent.

The Court: He may state whether they did or did not.

The Witness: A. They did, yes.

Mr. Hennessy: Q. They did what?

A. They taught that the capitalistic system of society must be overthrown.

Mr. Andersen: On that point, again, the complaint here charges the defendant with, at that time and apparently at the present time, wanting to overthrow the capitalistic government. In the history of politics and economics, I know of no such

(Testimony of Miles G. Humphreys.)

thing as a capitalistic government. If we could first have described in the record what a capitalistic government is, as a guarantee of [95] something or other, under the Constitutional rights of this country, then I believe we might have something to base this evidence on; but there is nothing before this Court regarding any capitalistic government. My client is not accused of trying to overthrow any capitalistic government.

Mr. Hennessy: I will show, before I get through, that the Communist Party believes every government save and except the Soviet government is a capitalistic government, and should be overthrown.

The Court: I will allow you to get a record on it. I might say, I will allow you wide latitude, also.

Mr. Hennessy: Q. Did they teach by what means the capitalistic society must be overthrown?

A. Through revolutionary means.

Q. Did they state whether or not force and violence should be used?

Mr. Andersen: Might I, again, object to the leading form of the questions and the way this witness is simply being brought along inch by inch, under a preconceived idea? The question that should have been asked this witness some time ago is: what did they teach him; and let him state the story without Mr. Hennessy bringing him along inch by inch.

The Court: Q. What did they teach you? Proceed, and tell us.

(Testimony of Miles G. Humphreys.)

A. They taught that the present forms of government except the Soviet government and all existing systems of society would have to be abolished through the dictatorship of the proletariat; and to establish the dictatorship of the proletariat would require a revolutionary process, the overthrow of the existing governments except the Soviet government; and that the working class, as a dictator, of the proletariat, would rule, through the Soviet system of society. As far as the application of force and violence was concerned, the Communist Party took the defensive, and put the first users of force upon the capitalistic government; they claimed that [96] the capitalistic government would resist the establishment of the Soviet system, through force and violence, and that the working class would be justified in using force and violence to establish the Soviet system of society.

Mr. Hennessy: Q. Was the establishment of the dictatorship of the proletariat to be the ultimate objective or program of the Communist Party?

A. No.

Q. What did they teach was the ultimate objective of the Communist Party program?

A. The ultimate objective would be the establishment of Socialism; and, through the establishment of Socialism, Communism would ultimately result.

Q. And, by "Communism," you mean a communistic form of society?

(Testimony of Miles G. Humphreys.)

A. A communistic form of society.

Q. And in the communistic form of society, would there be any such thing as private property?

A. No such thing as private property or no such thing as any form of government.

Q. Would there be any classes?

A. There would be no classes.

Q. How long did you continue to be a teacher in the Communist school?

A. I taught classes until April, 1926.

The Court: It is time to adjourn now.

(Thereupon, an adjournment was taken until tomorrow, Friday, December 8, 1939, at 10 o'clock a. m.) [97]

Thursday, December 7, 1939

MILES G. HUMPHREYS,

recalled by the United States.

Direct Examination

(continued)

Mr. Hennessy: Q. Mr. Humphreys, as I understand, you testified yesterday that, in the classes of instruction of the Workers Communist Party of America, they were taught that the Workers Communist Party of America was a section of the Third Communist International?

A. Yes, sir.

Q. What were you taught on that subject?

(Testimony of Miles G. Humphreys.)

A. That the Workers Communist Party of America was a section of the world Communist movement and affiliated to the Communist International in Moscow, the same as other Communist bodies, including the Russian Communist parties.

Q. What were you taught as to what the Third Communist International was?

A. The Communist International Congress of Communist Party delegates from the various Communist parties of the world.

Q. What were you taught in regard to the affiliation of the Workers Communist Party of America with the Third Communist International?

A. That the Communist International——

Mr. Andersen: Could I interpose an objection at this point, particularly with respect to the source of the information of the witness? Apparently, the witness was taught from various textbooks; and, if the teachings were from the textbooks, the writings themselves would be the best evidence and should be construed by the Court rather than the witness testifying as to what he was taught from.

The Court: Q. Were you taught from certain books?

A. The "A B C Of Communism" was used; and then the instructor would enlarge upon those instructions from the "A B C of Communism," from his own knowledge.

Mr. Hennessy: The best evidence will have no application here. We are asking as to what certain

(Testimony of Miles G. Humphreys.)

teachings were; not as to the contents of the writings. [99]

The Court: He may answer.

The Witness: A. That it was a part of the Communist International; that is, every member of the Communist Party of America were also members of the Communist International,—the World Communist Party; that they belonged to the American section, which was the Workers Communist Party; that they paid dues, and part of those dues went to support the International organization; and that the Workers Communist Party of America had duly accredited and recognized delegates to the Communist International.

Mr. Hennessy: Q. Did you attend any of the conventions of the Workers Communist Party during the period that you were a member of it?

A. State conventions.

Q. Did you attend any national conventions?

A. No.

Q. Were you taught whether or not the Third Communist International had a representative at the conventions of the Workers Communist Party in America? A. Yes.

Mr. Andersen: May I have the question read?

(Question read by the reporter)

Mr. Andersen: I will object to the form of the question as leading and suggestive.

The Court: He may answer.

The Witness: A. I was taught, and have been

(Testimony of Miles G. Humphreys.)

taught since then, and continually, that the Communist International has representatives in all major countries; and that the Communist International representatives come from other countries than from the country which is holding the convention; otherwise, no American citizen could be a Communist International representative in the Communist conventions in the United States; and that those representatives have full authority and the power of the Communist International in supervising and making recommendations and even suspending conventions of the Communist Party.

Mr. Hennessy: Q. Did the Third Communist International [100] exercise, to your knowledge, any supervision over the activities of the Workers Communist Party of America?

A. Yes. According to material I have read and according to reports made from national conventions by Communist delegates to national conventions, and according to the teachings of the Communist instructors, that those representatives have made recommendations for suspending conventions of the Communist Party.

Q. What do you mean by "suspending conventions of the Communist Party"?

A. In 1929, I believe, the national convention of the Communist Party elected a central committee; and the central committee was immediately ordered to Moscow, and some of them were expelled.

(Testimony of Miles G. Humphreys.)

Q. During the period that you were a member of the Workers Communist Party of America, the Communist Party of the United States of America, did you pay dues to the Third Communist International?

A. I paid the dues to the Workers Communist Party; and it was my understanding and the instructions of the Communist Party, according to their literature, that a part of those dues went to support the Communist International.

Q. When you became a teacher in the classes of the Workers Communist Party of America, did you teach the same doctrines that you had been taught when you were a student in that school?

A. I did.

Q. When you returned from New York and became a member again of the Communist Party of the United States of America, did you participate in the educational program? A. I did.

Q. In what respect?

A. I taught classes in Alameda County, in fundamentals of Communism, principles of Communism, taught classes from an outline supplied by the District of the Communist Party.

Q. What did those outlines consist of?

A. The outline consisted of sketches of material contained in Communist publications, and a general outline of this material in those publications, and recommending publications to be used as textbooks. [101]

(Testimony of Miles G. Humphreys.)

Q. Do you remember the names of any of the Communist publications that were contained in these outlines given you?

A. The program of the Communist International.

Q. When you refer to the program of the Communist International, I will hand you this book marked Government's Exhibit No. 6 in evidence; and ask you to examine and state whether that is the book you referred to when you referred to the program of the Communist International.

A. Yes; this and another pamphlet have identically the same material.

Q. What was the name of the other pamphlet?

A. "Programme of the Communist International."

Q. I show you a book designated, "Manifesto of the Communist Party," by Karl Marx and Friedrich Engels, U. S. Exhibit 7 in evidence; and ask you if this book was used by you in the educational program of the Communist Party of the United States when you were affiliated with them.

A. The contents of the book were evidently the same, although the front cover is different.

Q. You used it: the "Manifesto of the Communist Party," by Karl Marx and Friedrich Engels?

A. Yes; that is a reprint of the same pamphlet.

Q. I show you a book entitled, "The State and Revolution," by Nicolai Lenin, being Government's

(Testimony of Miles G. Humphreys.)

Exhibit No. 8 in evidence; and ask you if this book was used by you and by the Communist Party of the United States of America, in their educational program, during the period you were a member of that party.

A. This was used, I believe, during 1924 and 1925; and there is another pamphlet that had been published with the same material but with a different cover,—"The State and Revolution."

Q. I show you a book entitled, "'Left-Wing' Communism: An infantile Disorder," by V. I. Lenin, United States Exhibit No. 9 in evidence; and ask you if this book was used by you and by the [102] Communist Party of the United States of America in their educational program during the period that you were a member of that party.

A. The pamphlet that I used was "'Left-Wing' Communism: An Infantile Disorder." This was the later publication, and evidently the contents of the other pamphlet were expurged, by Stalin, so they changed the interpretation.

Mr. Andersen: I ask that that last part be stricken.

The Court: Q. You say they changed the interpretation. What do you base that on?

A. There have been several pamphlets destroyed of the literature in Russia by Stalin of the original Bolshevik, of this material. Some of those pamphlets are in this evidence.

Mr. Hennessy: Q. I show you a book desig-

(Testimony of Miles G. Humphreys.)

nated, "Programme of the Young Communist International," being Government's Exhibit No. 10 in evidence; and ask you if this book was used by you and the Communist Party of the United States in your educational program during the time that you were a member of the party.

Mr. Andersen: Did your Honor rule on the last objection?

The Court: The objection will be overruled.

The Witness: A. This pamphlet was used by myself and others in teaching classes as Young Workers. This was an official Communist publication used throughout the Communist Party.

Mr. Hennessy: Q. You say "Young Workers." By that, you mean the Young Workers League?

A. Young Communist League and Young Workers League.

Q. What was the relation, at that time, between the Young Workers League and the Communist Workers Party of America?

A. The Young Workers League was affiliated with the Young Communist International; the Young Communist International League was affiliated with the Communist International; and the Communist Party of the United States of America is affiliated with the Communist International.

[103]

Q. Was there any affiliation between the Young Workers League and the Workers Communist Party of America? A. No.

(Testimony of Miles G. Humphreys.)

Q. Was the membership of the Young Workers League confined to persons of a certain age?

A. The younger members of the Communist Party, although some of those members might be as old as 30 years of age.

Q. Were the objects and the aims of the Young Workers League identical with those of the Workers Communist Party of America? A. Yes.

Q. I show you a book marked, "The Theory and Practice of Leninism," by I. Stalin, published by the Workers Publishing Company, Chicago, Illinois, marked United States Exhibit 11 for Identification; and ask you if that book, embracing the theory and practice of Leninism, by Stalin, was used in your educational program of the Communist Party of the United States of America during the period that you were affiliated with it.

A. I have seen this pamphlet in the Communist Party bookstores, and distributed among the Communist Party.

Mr. Andersen: I am going to move that that be stricken as not responsive.

Mr. Hennessy: I think it is responsive. He has not finished his answer.

The Court: Read the answer. (Record read by the reporter.) Let him complete his answer.

The Witness: A. But I have not used this pamphlet myself, with this identical cover, although I have used the same material out of another pamphlet, with a different cover.

(Testimony of Miles G. Humphreys.)

Mr. Hennessy: Q. Have you a copy of the pamphlet that you used in your teachings?

A. No; I have not.

Q. You say you saw that in Communist Party bookstores?

Mr. Andersen: Your Honor, may I renew my motion as to the striking of the previous answer? The question was: whether he ever used [104] it.

The Court: The question was whether or not he ever used this book; and the answer, in substance, was that he saw it in the bookstores.

Q. Is that right?

A. Yes, I have seen it circulated among the Communist Party.

The Court: The objection is sustained.

Mr. Hennessy: Q. You have taught the theory and practice of Leninism by Stalin from other books? A. Yes, sir.

Q. This particular book, designated United States Exhibit 11 for Identification, was not the edition that you used in your teaching?

A. No.

Q. Now, did you see this book in Communist bookstores? A. Yes.

Mr. Andersen: I will object to that.

Mr. Hennessy: I will withdraw the question.

Q. Did the Communist Party conduct bookstores? A. Yes.

Mr. Andersen: I move that that answer be stricken unless I be permitted to take the witness

(Testimony of Miles G. Humphreys.)

on voir dire.

The Court: The objection will be overruled. Let us proceed.

The Witness: Yes, the Communist Party conducts bookstores.

Mr. Hennessy: Q. You say they conduct bookstores. What do you mean by that?

A. I mean that the Communist Party establish bookstores and operate bookstores distributing and selling Communist Party publications.

Q. Referring to this United States Exhibit No. 11 for Identification, did you ever see this particular publication in any bookstore operated by the Communist Party of the United States of America?

A. Yes, sir.

Q. Being sold to the public? A. Yes, sir.

Q. Did you ever hear of a company known as the Daily Worker Publishing Company?

A. Yes.

Q. Is that company in any way connected with the Workers Party, [105] the Workers Communist Party, or the Workers Communist Party of America?

Mr. Andersen: I object to that as calling for his conclusion.

Mr. Hennessy: I am asking for a fact.

The Court: He may answer, if he knows.

The Witness: A. My [illegible] the Communist Party and from the Communist Party is that all literature put out by the Communist Party,

(Testimony of Miles G. Humphreys.)

—newspapers, pamphlets, etc.,—were controlled, owned and operated by the Communist Party.

Q. Were you taught that the Daily Worker Publishing Company was an official publishing agency of the Communist Party of the United States of America?

A. It was an official publishing agency of the Workers Communist Party.

Mr. Hennessy: I offer this in evidence.

The Court: It may be admitted and marked.

Mr. Andersen: Same objection, if your Honor please.

(The document was marked "Government's Exhibit No. 11"; and the excerpts therefrom, "11A.")

U. S. EXHIBIT NO. 11-A

THE THEORY AND PRACTICE OF LENINISM

By I. Stalin

Published for The Workers Party of America, by The Daily Worker Publishing Co., Chicago, Ill.

The Theory and Practice of Leninism.

"Chapter V.

The Dictatorship of the Proletariat.

Pages 27-28.

The Dictatorship of the Proletariat as the Instrument of the Proletarian Revolution.

"The question of the dictatorship of the proletariat is above all the question of the fundamental

(Testimony of Miles G. Humphreys.)
(U. S. Exhibit No. 11-A—continued.)

meaning of the proletarian revolution. The proletarian revolution, its movement, unfolding, and conquests, become realities only through the dictatorship of the proletariat. This dictatorship is the chief fulcrum of the proletarian revolution, its organ and instrument, destined first of all to wipe out the resistance of the routed exploiters, to consolidate the conquests of the revolution, and then to lead this revolution to completion, to the complete victory of Socialism. The revolution can overturn the power of the bourgeoisie without the dictatorship of the proletariat. But it cannot crush the resistance of the bourgeoisie, maintain its conquests and advance towards Socialism if it does not, at a certain stage of its development create a special organ, the dictatorship of the proletariat, to be its fundamental fulcrum.

"'The essential question of the revolution is the question of power' (Lenin). Does that mean that the revolution ends with the seizure of power? No. The seizure of power is only the beginning. Overthrown in one country, the bourgeoisie still remains, for a number of reasons, stronger than the proletariat which has overthrown it. That is why it is necessary to safeguard one's power, to consolidate it and make it invincible. How can this be done? By accomplishing three main tasks which confront the dictatorship of the proletariat on the morrow of the revolution: they are:

(Testimony of Miles G. Humphreys.)
(U. S. Exhibit No. 11-A—continued.)

"(a) To break the resistance of the landed proprietors and capitalists, expropriated by the revolution, and to liquidate all their attempts to restore the power of capital;

"(b) To organize the Socialist reconstruction, by gathering all workers around the proletariat and preparing for the gradual disappearance of classes;

"(c) To arm the revolution, to organize the army of the revolution against the external enemy, Imperialism.

"The dictatorship of the proletariat is necessary for the accomplishment of these three tasks."

The Theory and Practice of Leninism.
Pages 30-31.

"* * * The dictatorship of the proletariat is not a change of ministry, but a new State, with new central and local organs, the State of the proletariat which rises on the ruins of the old State of the bourgeoisie. The dictatorship of the proletariat is born not of the bourgeois state of things, but of its destruction after the overthrow of the bourgeoisie, of the expropriation of landed proprietors and capitalists, of the socialization of the essential instruments and means of production, of the development of the proletarian revolution through violence. The dictatorship of the proletariat is the

(Testimony of Miles G. Humphreys.)
(U. S. Exhibit No. 11-A—continued.)
revolutionary power resting on violence against the bourgeoisie."

The Theory and Practice of Leninism.
Pages 32-33.

"Second Deduction. The dictatorship of the proletariat cannot be the result of the peaceful development of bourgeois society and democracy; it can be the result only of the destruction of the bourgeois army and State machine, the bourgeois administrative apparatus and the whole bourgeois political system.

" 'The working class cannot confine itself to taking possession of a ready-made governmental State machine and setting it going for its own ends.' (Marx and Engels: Preface to The Civil War in France.)

" 'The proletarian revolution has not to transmit the military and bureaucratic machine from one hand to another, as has been done up to the present, but must break it * * * This is the indispensable condition for every real people's revolution on the continent. (Marx: Letter to Kugelmann.)

"Marx's limitation with regard to the 'continent' has furnished the opportunists and menshevik- of every country with a pretext for asserting that Marx admitted the possibility of a peaceful transformation of bourgeois democracy into proletarian democracy, at least some countries (England and

(Testimony of Miles G. Humphreys.)
(U. S. Exhibit No. 11-A—continued.)

America), Marx did in fact recognize the possibility of this in the England and America of 1860, where monopolist capitalism and Imperialism did not exist and where militarism and bureaucracy were as yet little developed. But now the situation in these countries is radically different; Imperialism has reached its apogee there and there militarism and bureaucracy are sovereign. In consequence, Marx's restriction no longer applies.

"'Now, in 1917, in the epoch of the first great Imperialist war Marx's restriction falls of itself. England and America which have been till now, because of the absence of militarism and bureaucracy, the last and most important representatives of Anglo-Saxon "freedom," have now rolled in the bloody mire of militaristic and bureaucratic institutions which subject everything to themselves. Now both in England and America, the preliminary condition of every real people's revolution is the breaking and the destruction of the governmental machine'. (The State and Revolution).

"In other words, the destruction of the bourgeois governmental machine is the indispensable condition for the proletarian revolution, the inescapable law of the revolutionary movement in Imperialist countries.

"Indeed, if very much later the proletariat triumphs in the principal capitalist countries and the present capitalist encirclement gives way to the

(Testimony of Miles G. Humphreys.)
(U. S. Exhibit No. 11-A—*continued.*)

Socialist encirclement, the 'pacific' way of development is quite possible for certain countries where the capitalists, in view of the 'unfavorable' international situation, will judge it reasonable of their own accord to make serious concessions to the proletariat. But this supposition concerns only the distant problematic future. So far as the immediate future is concerned, there is no foundation for it.

" 'The proletarian revolution is impossible without the violent destruction of the bourgeois governmental machine and the putting of a new one in its place.' (The Proletarian Revolution)."

The Theory and Practice of Leninism
Page 56.

"3rd Stage (Consecutive with October Revolution.)

"Aim—to consolidate the dictatorship of the proletariat in one country, and to use it as a fulcrum for the overthrowing of Imperialism in all countries. The revolution is not to be limited to one sole country—but has entered its world-wide stage.

"Essential force—the dictatorship of the proletariat in one country and the revolutionary movements of the proletariat of other countries.

(Testimony of Miles G. Humphreys.)
(U. S. Exhibit No. 11-A—continued.)

"Principal reserves — the semi-proletarian masses and the peasants of advanced lands, the nationalist movements in colonies, and dependent states.

"Immediate tasks—to isolate the democratic petty bourgeoisie (partisans of Second International, promoters of the policy of conciliation with Imperialism.)

"Disposition of forces—alliance of proletarian revolution with Nationalist movement and dependent states.

"Strategy depends on the essential and reserve forces of the revolution remaining unchanged during a given stage; it adapts itself at each development of the revolution."

[Endorsed]: U. S. Ex. No. 11-A. Filed Dec. 8, 1939.

Mr. Hennessy: Q. I show you a book designated, "The 4th National Convention, Held in Chicago, Illinois, August 28-30, 1925, Workers (Communist) Party of America," being United States Exhibit 12 for Identification; and ask you if this book was used by the Workers Communist Party of America, during the period that you were a member of it, in their educational program.

A. I have seen this publication; I cannot say definitely I have used it in classes of the Workers

(Testimony of Miles G. Humphreys.)

Communist Party.

Q. Where did you see that publication?

A. I am not sure whether I saw it in San Francisco or whether it was sent to the unit, or the branch, in San Jose when I was organizer; but I have seen the pamphlet. I believe it was distributed through the Communist Party branch in San Jose. [106]

Q. Do you know whether it was or was not?

A. I could not swear to it. I believe it was.

Q. I show you book designated, "The Second Year of the Workers Party of America," published by the literature department, Workers Party of America, Chicago, Illinois, being Government's Exhibit No. 13 For Identification; and ask you if this publication was used by the Workers Party of America and by you during this period that you were a member of that party, in their educational program.

A. I do not seem to be familiar with this pamphlet.

Q. I show you a pamphlet or book designated, "Acceptance Speeches by William Z. Foster for President and Benjamin Gitlow for Vice-President of the Workers Communist Party, National Election Campaign of the Workers Communist Party, 1928," being marked Government's Exhibit No. 14 For Identification; and ask you if this book was used by you or by the Workers Communist Party,

(Testimony of Miles G. Humphreys.)

during the time that you were a member of it, in their educational program.

A. No; I was not a member of the Communist Party when this was put out. Benjamin Gitlow was expelled from the Party in 1929; and I was not a member during that time; and I have never seen that pamphlet before.

Q. I show you a book designated, "The Platform of the Class Struggle, National Platform of the Workers Communist Party," being Government's Exhibit No. 15 For Identification; and ask you if this book was used by the Workers Communist Party and by yourself, during the period that you were a member of that Party, in the educational program of the Workers Communist Party.

A. No; I never used that pamphlet. I do not believe I have ever seen it before.

Q. I show you a book entitled, "The International of Youth, Organ of the Executive Committee of the Young Communist International," being United States Exhibit No. 17 For Identification; and ask you if this particular book was used by you or by the Workers Communist [107] Party, during the period that you were a member of it, in its educational program.

A. I do not believe that I used this pamphlet.

Q. I show you a book designated, "Why Communism? Plain Talks on Vital Problems," by M. J. Olgin, being Government's Exhibit No. 18 in evidence; and ask you if this book was used by you

(Testimony of Miles G. Humphreys.)

and by the Communist Party of the United States of America, or the Workers Communist Party of America, in their educational program.

A. Yes; this book was used, to a great extent; many thousands of them were distributed through the Communist bookstores; also, it was used as a textbook.

Q. In the classes? A. In classes, yes.

Mr. Hennessy: Take the witness.

Cross Examination

Mr. Andersen: Q. How old are you, Mr. Humphreys?

A. Forty-nine—Forty-eight; I will be forty-nine next month.

Q. You are a native of California, aren't you?

A. Yes.

Q. Would you tell me how much academic schooling you had? A. Two years' college.

Q. Where was that?

A. Several correspondence courses.

Q. I mean: Did you actually attend any college?

A. Yes.

Q. Which college?

A. San Jose State College.

Q. How long did you attend there?

A. A year and a half.

Q. What were your studies there?

A. Educational.

Q. What branch or what studies did you study?

A. Education.

(Testimony of Miles G. Humphreys.)

Q. That was the subject? A. Yes.

Q. I assume that you went through high school?

A. No; I did not.

Q. Were you enrolled as a special student at San Jose? A. I was.

Q. I assume that you went through the grammar school? A. I did.

Q. And your correspondence courses: what were they? A. Locomotive engineering, law, radio.

Q. That is the substance of your academic education? A. That is [108] part of it.

Q. With the exception of such education as you acquired as a member of the Communist Party, that is the substance of your education,—your academic education? A. Yes.

Q. How long did you teach classes in Communism?

A. Well, I taught classes for over a year, when I was a member of the Workers Communist Party, and taught classes in the Communist Party units and in international labor and in the Communist Party section, over a period of about four years.

Q. About four years? A. Yes.

Q. By the way, do you profess to be an expert on the philosophy of the doctrines of Marx and Lenin?

A. I do not profess to be an expert; I believe I understand the principles of Marxism and Leninism, and even Stalinism.

Q. Even Stalinism? A. Yes.

(Testimony of Miles G. Humphreys.)

Q. But you do not profess to be an expert on any of those subjects?

A. I am not posing as an expert.

Q. No. I just wanted to make that clear. You first joined the Communist Party in 1924?

A. Correct; Workers Communist Party.

Q. When I refer to the Communist Party, I refer to either the Workers Communist Party or the Communist Party. Off and on, you remained a member for some time until 1936 or 1937, did you not?

A. I remained a member until about 1927.

Q. I say: off and on, you remained a member, with certain lapses, until about 1937, didn't you?

A. Not off and on, because that is an ambiguous question. I remained a member until 1927; became a member again in 1931—I believe it was 1931—until 1937.

Q. And in 1937, you were expelled from the Communist Party, were you not?

A. I resigned from the Communist Party.

Q. You know, do you not, that charges were preferred against you by the Communist Party?

A. I have no knowledge of it.

Q. You have no knowledge of it at all?

A. No. [109]

Q. You have knowledge of the fact that you were expelled, haven't you?

A. No direct knowledge—indirectly.

Q. I mean: You have seen letters in which it

(Testimony of Miles G. Humphreys.)

was stated that you had been expelled from the Communist Party?

A. Yes; I have seen letters addressed to other parties; some time after, I guess a year and a half after I had quit the Communist Party, I saw those letters.

Q. Prior to that time, you had been expelled from a labor union, hadn't you? A. No.

Mr. Hennessy: I object to that as not proper cross-examination; immaterial, irrelevant and incompetent.

Mr. Andersen: It is preliminary.

The Court: His answer is "No." It may stand.

Mr. Anderson: Q. Weren't you a member of Local Union 96? A. I still am.

Q. You were fined $1,000 in that, were you not?

Mr. Hennessy: I object to that on the ground it is not proper cross-examination.

The Court: Objection sustained.

Mr. Andersen: Q. Were you expelled from the C. I. O. organization, in Oakland? A. No

Mr. Hennessy: I object to that, on the same grounds.

Mr. Andersen: Q. Were you expelled from any organization in the City of Oakland, as a result of charges having been filed against you, in which you were charged with advocating force and violence?

Mr. Hennessy: I object to that on the ground it is not proper cross-examination.

(Testimony of Miles G. Humphreys.)

The Court: Objection sustained.

Mr. Andersen: May I state the reason I desire to pursue this line of questioning? We can show, without question, that on several occasions,—three, to be exact,—this witness was charged, both in union labor organizations and in the Communist Party itself, with [110] advocacy of various types of force and violence; and that, as a result of such advocacies and teachings, this witness was first disciplined by a labor organization, of which he is presently a member, and a thousand dollar fine; that he was later expelled from a division of the C. I. O. organization, or removed from office of the C. I. O. organization, in Oakland, as a result of the same general activities and advocacies; and that, subsequent to that, he was again charged, in the Communist Party, with using force; that he advocated using force and violence in trade unions and other activities; and, as a result thereof, expelled from the Communist Party itself. And we consider that relevant to the matter at issue.

Mr. Hennessy: Q. What happened in the Communist Party may be relevant; but what happened in some trades union is not.

Mr. Andersen: The basis of the charges, in the Communist Party, were his advocacies and actions in the trades union.

The Witness: I would like to answer that question.

The Court: You may answer. We will have to

(Testimony of Miles G. Humphreys.)

continue otherwise only as far as matters of the so-called Communist Party are concerned. Keep that in mind.

Mr. Andersen: These are the charges that were filed in this organization, and actually form the basis of the charge before the Communist Party itself.

The Court: Proceed. There is nothing before the Court.

The Witness: I was not expelled from any union or council, or from the Communist Party, for any advocacy of force and violence, or any other tactics that the Communist Party might use. What the case was is: I quit the Communist Party; and the Communist Party manoeuvred for many months to oust me from the Labor Movement. Their last desperate attempt was to frame me on these charges, which originated in Mr. Schneiderman's headquarters: and I have documentary proof to that effect, witnesses who testified under oath to that [111] effect: that it was a frameup by the Communist Party, including Mr. Stalin, to oust me from the Labor Movement and discredit me with the working people; and, on this frameup, they found me guilty of these charges to a lesser extent by a jury of three Communist Party members, by instructions from the Communist Party, and by 80 per cent of the Communist Party delegates, being Communist Party members of the Council delegation. These charges were never pressed against me in the Communist Party, and I never had any trial in the

(Testimony of Miles G. Humphreys.)

Communist Party on these charges. I never had any charges like this brought against me in any labor union, compared to what Mr. Andersen might state.

Mr. Andersen: Q. Have you finished your explanation?

A. Yes. There was another frameup, that didn't go through; 80 per cent of the C. I. O. Council delegates were Communist Party members.

Q. That was in the C. I. O. Council?

A. Yes.

Q. You said that you were found guilty?

A. By a vote of 28 to 36.

Q. You said that they found you guilty of certain charges?

Mr. Hennessy: I object to this, if your Honor please, as not proper cross-examination; outside the issues of this case.

Mr. Andersen: It is merely preliminary.

Mr. Hennessy: It does not matter whether it is preliminary or not; it is outside the issues of this case and not proper cross-examination.

The Court: Sustained. You will have to limit the testimony as the Court indicated.

The Witness: I might state, your Honor——

The Court: Just a minute.

Mr. Andersen: Q. Then, as I understand, while you know you were expelled from the Communist Party, you don't know why you were expelled; is that correct?

(Testimony of Miles G. Humphreys.)

A. I understand, because I refused to take orders.

Q. Because you refused to follow the decisions of the Communist [112] Party; is that correct?

A. The decisions of Mr. Schneiderman, Mr. Hanoff and Mr. Lambert.

Q. Was that before or after you were expelled —was that before or after you say you resigned?

A. About a year and a half after.

Q. When did you say you resigned?

A. I quit paying dues in December, 1936.

Q. Then, you would say that about the middle of 1938 is when you were expelled; is that correct?

A. Oh, no.

Q. Then, when was it?

A. I resigned from the Communist Party, I believe it was in March or April; I turned my book in to the Communist Party in 1937; I think it was about a year after that, or probably over a year, before I saw any of these letters.

Q. Then, you learned some time in 1938 you had been expelled? A. Yes.

Q. You never endeavored to reenter the party, of course. A. I would not.

Q. You never tried to? A. No.

Q. Now, as a matter of fact, you sought to rejoin the Communist Party in April, 1938, didn't you?

A. No.

Q. You did not? A. No.

Q. I assume your memory is clear on that point;

(Testimony of Miles G. Humphreys.)

is that correct? A. Quite clear.

Q. Tell me: What name did you use in the Communist Party? A. Humphreys.

Q. Did you ever use the name Hunt?

A. No.

Q. Did you ever make an application to join the Communist Party under the name of Hunt?

A. No.

Q. Do you know a man named Frank Sullivan?

A. Yes.

Q. Did you have a talk with Mr. Sullivan on April 18th of 1938, to propose you as a member of the Communist Party? A. No.

Q. Did you write a letter to the Communist Party in June of 1938? [113]

A. I wrote letters during 1938 some time.

Q. Did you write a letter in 1938 seeking reinstatement in the Party?

A. I wrote a letter; I made a statement to the Communist Party.

Q. You did? A. You may read the letter.

Q. You read the Constitution of the Communist Party, didn't you?

A. They have several constitutions.

Q. I show you Government's Exhibit 5 in evidence. You have read that, haven't you, or a draft of it? A. A draft of this.

Q. You are quite familiar with it?

A. More or less familiar, yes.

Q. You have expressed yourself as being com-

(Testimony of Miles G. Humphreys.)

mitted to the statements therein contained, have you not? A. In that constitution?

Q. Yes. A. I have not.

Q. You have not. In other words, you, I assume, are contrarily-minded or not in accord with the tenets of the Communist Party as expressed in Exhibit 5? A. No; I am not.

Q. Is this the letter, dated June 11, 1938, which you wrote to the Communist Party? Is that your signature?

A. Apparently it is, although I have seen it forged several times.

Q. Is that your signature or is it not your signature? A. Just a moment until I read it.

Q. Yes; take plenty of time.

A. Yes, I wrote this letter.

Q. You wrote the letter? A. Yes.

Mr. Andersen: May I read it in evidence, if your Honor please?

Mr. Hennessy: We have no objection.

Mr. Andersen: The letter is dated June 11, 1938: "Dear Comrades:—" Might I interrupt my reading?

Q. To whom did you send this letter?

A. I believe it was given to Ed. Green.

Q. You mean you sent it through some channel, knowing that it would ultimately come to the attention of the Communist Party?

A. He was a Communist Party member, yes.

[114]

Q. You wanted it to come to the attention of the

(Testimony of Miles G. Humphreys.)

proper official committee of the Communist Party, in order that you might again become a member of that organization? A. No.

Q. Did you want it to come to the attention of the proper official committee of the Communist Party?

The Court: Q. Was it mailed?

A. No; it was given to a person, as he has stated.

The Court: I thought it was mailed. Proceed.

Mr. Andersen: Q. You wanted this letter to come to the attention of certain committees of the Communist Party, didn't you?

A. I was striving to get along with the Communist Party at the time.

Q. You wanted this letter to come to the attention of the official committee of the Communist Party, didn't you? A. Yes.

Mr. Andersen: This is a letter dated June 11, 1938; without any caption. It reads:

DEFENDANT'S EXHIBIT A

"Dear Comrades:

"Your letter of June 1 received and contents noted.

"Regarding my relations to the Party. I chose a certain course which in my point of view was necessary. If a similar situation should develop other channels might be employed. If the course I followed is considered a mistake, then I made the mistake. In the future

(Testimony of Miles G. Humphreys.)

(Defendant's Exhibit A—continued.)

I will do my upmost to prevent such situations whether it is myself or others concerned.

"The Program of the Party, the Constitution and Draft of Amended Constitution are documents all Communists must follow and apply if Socialism is to be established. I will studiously follow and apply these documents to the best of my ability. I will insist and demand that others do likewise.

"Hoping this meets with your approval, I am Comradely yours,

M. G. HUMPHREYS." [115]

I ask that this be marked.

The Court: It may be admitted and marked.

(The letter was marked "Defendant's Exhibit A.")

The Court: We will take a recess.

(After recess)

Mr. Andersen: No further questions, your Honor.

Mr. Hennessy: That is all.

WILLIAM F. HYNES,

called for the United States; sworn.

Direct Examination

Mr. Mercado: Q. What is your occupation, Mr. Hynes? A. Police officer, City of Los Angeles.

(Testimony of William F. Hynes.)

Q. How long have you been a police officer?

A. Approximately 18 years.

Q. What have been your duties in connection with your police activities?

A. At the present time, I am assigned to the homicide bureau, the detective division, and have been for the past two and a half months; prior to that time, I had been assigned for a period of ten months to the West Los Angeles detective bureau; and prior to that time for approximately 14 years I had been with the intelligence bureau of the Los Angeles police department, having to do with the investigation of different diversified activities, particularly the investigation of Communist activities, along with possibly 15 or 20 other lines of investigation.

Q. When did you join the police department?

A. In 1922.

Q. Were you ever a member of the Communist Party?

A. I was a member of the Workers Party in 1922.

Q. For how long were you a member?

A. A period of approximately eight months.

Q. Did you subsequently join any other Communist organization?

A. No; I subsequently became a member of the I. W. W.—secretary [116] of the I. W. W.

Q. During what period of time was that?

A. That was in 1923.

Q. During your investigation of the Communist

(Testimony of William F. Hynes.)

activities, did you have any assistants under your direction and control?

A. Well, I had approximately 18 to 20 regularly assigned--at times three or four hundred men, working under my direction, in connection with different activities that the Bureau covered.

Q. Did that include Communistic activities?

A. Yes, Communistic activities.

Q. In the course of your duties, did you have occasion to investigate the program and the practices of the Communist Party?

A. Yes; over a period of years.

Q. During that time, did you collect literature of the Communist Party? A. I did.

Q. And during that time, did you make an investigation as to whether this literature was authentic literature of the Communist Party?

A. Yes, sir.

Q. I take it that these other officers working under you also had occasion to make investigations?

A. Yes, sir.

Q. And your testimony is somewhat a result of your own investigation and the investigation of those men who worked under your direction and control?

A. In connection with the Communist Party, more from my own personal investigation.

Q. Have you had occasion to discuss Communist matters with many Communists?

A. Yes, I have talked to a great many Com-

(Testimony of William F. Hynes.)

munists and Communist leaders in my time.

Q. Have you made a collection of Communist literature?

A. Yes; I have quite an extensive library in Los Angeles, various books, official books, publications published by the Workers Party, the Workers Communist Party of the United States and International; and international labor unions; and various organizations of the Communist Party; membership books; documents taken from the Communist [117] headquarters at the time of arrests; documents taken on felony charges which subsequently resulted in felony charges being filed under the Alien Immigration Act, leading to the deportation of aliens.

Q. Approximately how many volumes of documents have you collected, over a period of years, as result of your activities in the police department?

A. Well, we have approximately 30 or 40 cabinets full of official documents issued and published from time to time by the Communist Party. I would be unable to estimate the number. On some occasions, on raids, we seized as many as six or seven thousand pieces of literature; and I recall other times we received as high as three or four thousand pieces of correspondence.

Q. Approximately how many books and pamphlets which have to do with the teachings of the Communist Party have you collected in your lifetime?

(Testimony of William F. Hynes.)

A. I have at times seized or purchased practically every piece of literature that was published by the Communist Party that was available, in the way of publications, Daily Worker, the Young Worker, the Western Worker, People's World, all official proceedings of the World's Congress, of the Communist International, and others.

Mr. Andersen: If your Honor please, he is naming a great many periodicals and other writings which he identifies as official communications of the Communist Party. This is all, as I understand it, but his conclusion and his opinion; and I wish to object to it on that ground unless there is a sufficient foundation laid.

The Court: I take it that is what counsel is doing now: laying the foundation.

Mr. Mercado: Yes.

Mr. Andersen: He is not laying the foundation; he is bringing out the ultimate fact.

The Court: What fact?

Mr. Andersen: The last answer he just gave illustrates that. [118] He testified that various papers and publications were official papers and official publications of the Communist Party.

The Court: Proceed. The objection will be overruled.

Mr. Mercado: Q. Did you ever attend any of the Communist schools? A. No; I did not.

Q. In connection with your investigation, were you able to ascertain which of the documents that

(Testimony of William F. Hynes.)

you have collected were official documents of the Communist Party?

A. Yes; I can identify the documents that were generally sold and distributed by the Communist Party through its official distributing agencies or bookshops, or which were circulated by Communist Party channels.

Q. I will show you here Government's Exhibit in evidence No. 6, entitled, "Programme Of the Communist International"; and ask you if you have ever seen that document before.

A. Yes; I have seen hundreds of copies of this document and have seized a large number of this particular document in question, a similar document, with the same cover, the same title. It has been circulated in Los Angeles by the Communist Party.

Mr. Andersen: I move that the latter part of the answer be stricken as not responsive.

The Court: Read the question and answer. (The record was read by the reporter.) Let the question and answer stand. The objection is overruled.

The Witness: A. (Continuing) I have read the document, also.

Mr. Mercado: Q. Do you know if this document was distributed by the Communist Party as part of its literature and part of its program?

A. It was. It was sold, in its bookshops, as official literature.

Q. I show you Government's Exhibit in evidence

(Testimony of William F. Hynes.)

No. 7, and ask you if you have seen that book before.

A. I have seen any number of these copies, similar copies; I have seen them, with the yellow [119] cover, published by the Kerr Company; and have seen them in the plain, white, newspaper type of cover. This has been sold in the Communist bookstore at 224 South Spring Street, for a period of years. This document is one of the earliest ones.

Q. Might I ask you: Do you know whether the Communist Party circulates this pamphlet as part of their literature?

A. I do. It is advertised in their Workers library listing of books, and was as late as 1930 or 1932.

Q. I will show you Governments' Exhibit 11 in evidence; and ask you if you have seen that book before.

A. Yes, I have seen this book; I seized a numb of copies of similar type of book and cover, and I have seen books of similar type under the same title. This books is one of the first books published in this country, as I recall it.

The Court: Q. Speak up louder.

A. It is one of the first books published, of this type, by the Workers Party; in 1924 or 1925 and 1928, I seized a number of these books.

Q. I will ask you if you know whether this book is distributed by the Communist Party. A. Yes.

Q. I will show you Government's Exhibit 8 in evidence, and ask you if you have ever seen that

(Testimony of William F. Hynes.)

pamphlet before.

A. Yes, I have. I recall, particularly, seizing a number of these in a raid on the Workers Communist Party at 322 West Second Street, I believe, in 1927. These were sold in a bookshop, and a number of them were seized in a raid on a bookshop operated by Paul Reese. This book also was published in a blue cover, as I recall it. This is on sale now in the Communist bookshop, I think, at 226 or 230 South Spring Street, at the present time.

Q. And do you know if this book is distributed by the Communist Party as part of their official literature?

A. *I* was, by the Workers Communist Party.

Q. And it is now being distributed, in different editions, with the [120] same subject matter?

A. Yes, sir.

Q. I will show you Government's Exhibit 9 in evidence; and ask you if you have ever seen that book before.

A. Yes; I have seen and have any number of these copies at the present time. This is generally sold and distributed in the Communist bookstores in Los Angeles by the Communist Party—it is now being sold.

Q. I will ask you whether or not you know this book was distributed as official literature of the Communist Party as a part of its teachings.

A. Well, I know it was circulated and sold in their bookshops.

(Testimony of William F. Hynes.)

Q. I will show you Government's Exhibit 10 in evidence; and will ask you if you have ever seen that document before.

A. Yes; any number of copies of this document; this is sold in the Communist bookstores in Los Angeles; and I have read the document and have possibly 25 or 30 copies of it left.

Q. Do you know if this book was distributed by the Communist Party as representing part of their program? A. It was.

Q. I will show you Government's Exhibit 12 For Identification; and ask you if you have ever seen this book before.

A. Yes; this pamphlet entitled, "The 4th National Convention, Workers (Communist) Party of America," —I have a number of copies of this, which I seized; and I have bought additional copies in the bookstore at 224 South Spring Street. This goes into the controversy within the Workers Party at the time it changed its name to the Workers Communist Party in 1924 or 1925. It also, as I recall, specifically says it is an official publication of the Workers Communist Party. It was sold and circulated by the Communist Party in Los Angeles.

Q. Have you read the pamphlet?

A. Yes, I have read the pamphlet.

Q. I will ask you if you know of this publication entitled, "The 4th National Convention," Government's Exhibit No. 12 for the purpose of identification, was distributed by the Communist Party as

(Testimony of William F. Hynes.)

[121] their official document of their 4th National Convention? A. It was.

Mr. Mercado: I will offer this in evidence, your Honor.

The Court: It will be admitted and marked.

(Document marked "Government's Exhibit No. 12," and the excerpts, "12A.")

U. S. EXHIBIT No. 12-A

THE 4TH NATIONAL CONVENTION
WORKERS (COMMUNIST) PARTY OF
AMERICA

Held in Chicago, Ill.
Aug. 21-30, 1925.
Published by the Daily Worker
Publishing Company.

The 4th National Convention
Workers (Communist) Party of America
Page 13.

"Anti-Religious Training Campaign. Our campaign against religious training in the schools reached great masses of workers. In New York the campaign was carried into the schools, and in Ohio into both the schools and unions. In some districts, as many as 100,000 anti-religious leaflets were distributed."

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 12-A—continued.)

The 4th National Convention
Workers (Communist) Party of America
Page 18.

"In accord with the instructions of the Communist International, most of our work has been carried on in connection with the American Negro Labor Congress * * *."

The 4th National Convention
Workers (Communist) Party of America
Page 23.

"Young Workers' League. The Young Workers' League, during the past period, has consolidated its forces, developing from a loosely scattered organization to its present national character, participating in the struggles of the young workers. More marked than even the organizational growth has been the political development of the Young Workers' League, which today is playing an important role in the Party discussion as well as initiating and participating in a great many political campaigns, such as defense of Crouch and Trumbull, Hands off China, anti-religion, Child Labor, etc."

The 4th National Convention
Workers (Communist) Party of America
Page 41.

"* * * The recent instructions to our Party by

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 12-A—continued.)

the Communist International emphasizes again the necessity of our educating the members of the Party to an understanding of the necessity of their joining the trade unions. * * *"

The 4th National Convention
Workers (Communist) Party of America
Page 43.

"PAMPHLETS.

"The publication of party pamphlets and books was taken over by the Daily Worker in January, 1925. The publications for 1925 will therefore be included in the report of the Daily Worker Publishing Co. During the year 1924 the Party published the following pamphlets:

"The Second Year—Convention Report..... 3,000".

The 4th National Convention
Workers (Communist) Party of America
Page 63-65-66

"Chapter III.

"RESOLUTION OF THE MAJORITY ON THE REPORT OF THE C. E. C.

"1. We endorse fully and wholeheartedly all the decisions of the last plenum of the Comintern and also the decisions of the C. I. on the American question (the Labor Party and the general policies of

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 12-A—continued.)

the Party) and we pledge our energetic support to carry these decisions into effect.

* * * * * * *

"4. We also endorse fully and pledge our most active support to the Comintern and Parity Commission decisions providing for the liquidation of Loreism in our Party. We demand that the Party be united in an uncompromising struggle against this dangerous right wing tendency. We pledge our fullest support to the whole Comintern program of Bolshevizing our Party, including a militant fight against the right wing, the reorganization of the Party on the basis of shop nuclei, and the raising of the theoretical level of our membership.

* * * * * * *

12. The decision of the Comintern on the Labor Party controversy settles the differences of opinion in our Party on that very important question. It gives our Party a clear policy of work and struggle for a Labor Party based upon the mass support of the trade unions. The mistake of temporarily abandoning the slogan pointed out by the Comintern has been corrected by the Central Executive Committee, which has already outlined a program and laid the basis for a new campaign for a Labor Party.

"13. We support fully the insistence of the C. I. that on premature organizational steps shall be taken in the Labor Party campaign, that a Party

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 12-A—continued.)

formed only by the Workers Party and its close sympathizers in close sympathizers' organizations is not a Labor party and that we must guard against the splitting off of the left wing from the Labor Party to transform it into a mass Communist Party, but on the contrary we must let the left wing grow within the broad movement and strive to win the masses for the revolutionary class struggle. We accept fully the position of the majority, approved by the Comintern, that we must fight for a Labor Party based upon the mass support of the trade unions.

"14. We express full confidence in the leadership of the present Central Executive Committee. We are firmly convinced that only by giving the leadership of the Party to the present majority will the Party be able to make the best progress towards becoming a mass Communist Party on the basis of Leninism and under the leadership of the Comintern."

The 4th National Convention
Workers (Communist) Party of America
Page 142.

"In this hour, the Workers (Communist) Party of America, knowing its duty and ready to act with vigor and decision, pledges anew to the workers and peasants of Soviet Russia its every effort to defend and advance the world proletarian revolution, to

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 12-A—continued.)

support Soviet Russia and its allies among the world's exploited and oppressed, to extend and intensify the movement for recognition of Soviet Russia by the American capitalist government on the basis of the common interests of the workers and poor farmers of America with the workers and peasants of Soviet Russia. We shall make all efforts to prevent a new militant attack upon the U. S. S. R. and to hold aloft the banner of the Proletarian Dictatorship of the American bourgeoisie.

"(Adopted unanimously.)"

The 4th National Convention
Workers (Communist) Party of America
Page 166.

"RESOLUTION ON THE SIXTH ANNIVERSARY OF THE FOUNDATION OF THE COMMUNIST PARTY OF AMERICA.

"Comrade Ruthenberg introduced the following resolution on the Sixth Anniversary of the formation of the Communist Party of America:

"The closing day of the Fourth National Convention of our Party falls on the sixth anniversary of the day on which our Party definitely split from the Socialist Party, and on the eve of the day of the formation of the Communist Party.

"Thru six years our Party has held aloft the banner of Communism and the Communist Interna-

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 12-A—continued.)

tional in the United States. Thru years of persecution, deportation and imprisonment our Party has stood firm and continued the struggle to revolutionize the American workers and mobilize them for a Communist Society in the United States.

"The Fourth National Convention marks a new epoch in the history of our Party. It has taken the steps to clear our Party of right wing influence and tendencies and shown the way for the Bolshevization of the Party. It has adopted a correct statement of principles and policy to guide the work of our Party. Our Party goes on from this convention to new and greater achievements for the revolutionary struggle of Communism.

"The Fourth National Convention calls upon all Party units hereafter to celebrate this anniversary by holding of special mass meetings at which the history of our Party and its struggles in the interests of the workers shall be discussed and special efforts be made to draw into the Party the most advanced and militant workers of this country.

"Long Live the Workers Communist Party of America.

"Long Live the Communist International.

"Resolution adopted unanimously."

[Endorsed]: U. S. Ex. 12-A. Filed Dec. 8, 1939.

(Testimony of William F. Hynes.)

Mr. Mercado: Q. I will show you Government's Exhibit No. 13 For Identification, and ask you if you have ever seen that before.

A. Yes, I have. I have eight or ten copies of this particular document entitled, "The Second Year of the Workers Party of America." It is sold and distributed by the Communi*ty* Party bookstores. I have seized any number of copies from Communist Parrty headquarters.

Q. Have you read the document?

A. Yes.

Q. I will ask you if you know, of your own knowledge, if the pamphlet entitled, "The Second Year of the Workers Party of America," Government's Exhibit No. 13 For Identification, was distributed by the Communist Party as their official report on the convention held in Chicago, Illinois, December 30 and 31, 1923, and January 1 and 2 of 1924. A. Yes.

Mr. Mercado: I will offer this in evidence as Government's next exhibit, your Honor.

The Court: It may be admitted, and marked.

(Document marked "Government's Exhibit No. 13"; and the excerpts, "13A.")

(Testimony of William F. Hynes.)

U. S. EXHIBIT NO. 13-A.

THE SECOND YEAR OF
THE WORKERS PARTY OF AMERICA

Report of the Central Executive
Committee to the Third National
Convention.

HELD IN CHICAGO, ILLINOIS
Dec. 30, 31, 1923 and Jan. 1, 2, 1924

THESES. PROGRAM. RESOLUTIONS.
By C. E. Ruthenberg

Published by the Literature Department
Workers Party of America
1009 N. State St., Chicago, Ill.

The Second Year of the Workers Party of America
page 4.

"This mighty, powerful, colossal capitalist order the Workers Party of America is fighting to overthrow and to replace with a new social order. The twenty-five thousand men and women who are today the members of the Workers Party dare hope —nay, believe, are certain—that in spite of the economic power of the capitalists, in spite of the traditions which support their industrial system and government, in spite of laws, courts, police, army and navy, they will win in this struggle and establish a Communist social order in the United States."

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 13-A, continued)

The Second Year of the Workers Party of America

Page 6.

"The reports and resolutions of the Third National Convention of the Workers Party graphically illustrate the practical application of this policy and the growing strength of the Workers Party as a revolutionary force."

The Second Year of the Workers Party of America

Page 7.

"Soviet Russia is a dagger thrust straight at the heart of the whole capitalist world. It is a flag which is the inspiration and rallying point of the exploited everywhere in the world. The Workers Party takes up the fight for Soviet Russia in the demand for recognition and trade relations.

IV.

"Thus there is being created a growing revolutionary force in American life. The capitalists hold in their hands a mighty power. But within the capitalist order there are generated those forces which weaken and disintegrate that power in the form of the continuous class conflict which capitalism engenders. What is needed is the organization which can combine for the struggle against the capitalists all the forces of opposition which it creates. That organization is here—a Communist party, the Workers Party of America."

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 13-A, continued)

The Second Year of the Workers Party of America

Page 13.

"The policies outlined by the Second National Convention had as their basis the application of the United front policy of the Communist International in the United States. * * *"

The Second Year of the Workers Party of America

Page 27.

Communist Propaganda.

"While carrying on the united front campaign of our Party the Central Executive Committee has not overlooked the necessity of continuous propaganda about the fundamentals of Communism, in order that the workers may not be misled as to the real character of our Party. It has kept in the foreground the necessity of the campaigns which would bring out the fundamental Communist principles and educating the workers to an understanding of the Communist program and goal. These campaigns have been the following:

a. Program Distribution.

Immediately after the last convention of the Party the Central Executive Committee undertook the distribution of a million copies of the Party program setting forth these principles. While this goal was not reached we were able to distribute a half-million copies of the program, with the resulting Communist education among the masses."

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 13-A, continued)

The Second Year of the Workers Party of America

Page 42.

"During the year the C. E. C. decided to as quickly as possible establish a series of bookstores in the larger cities for the sale of Communist literature. The first of these stores has been established in New York under the name of the Jimmie Higgins Bookstore and seems to be on the road to success."

The Second Year of the Workers Party of America

Page 80

"Under these conditions to talk of 'democracy' is to throw sand into the eyes of the workers. The much-talked of 'American democracy' is a fraud. Such formal democracy as is written into the Constitution and the laws of the country is camouflaged to hide the real character of the dictatorship of the capitalists.

"While recognizing the impossibility of the workers winning their emancipation thru use of the machinery of the existing government, the Workers Party realizes the importance of election campaigns in developing the political consciousness of the working class. The first step toward revolutionary political action by the working class must be made thru independent political action by the workers in election campaigns. The Workers Party will

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 13-A, continued)

therefore participate in election campaigns and use them for propaganda and agitation to develop the political consciousness of the workers.

"It will endeavor to rally the workers to use their power to make real the rights which the fraudulent American democracy denies them. It will use them to carry on the struggle for the right of labor to create a revolutionary political party and for such an organization to function openly in the political life of the country.

"The Workers Party will also nominate its candidates and enter into election campaigns to expose the fraudulent character of capitalist democracy and to carry on the propaganda for the soviets. It will use the election campaigns to rally the workers for mass political demands upon the capitalist state. Its candidates, when elected to office, will use the forums of the legislative bodies for the same purpose."

The Second Year of the Workers Party of America

Page 86.

"The Workers Party declares its sympathy with the principles of the Communist International and enters the struggle against American capitalism, the most powerful of the national groups, under the inspiration of the leadership of the Communist International.

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 13-A, continued.)

"It rallies to the call: 'WORKERS OF THE WORLD UNITE' "

[Endorsed]: U. S. Ex. No. 13-A. Filed Dec. 8, 1939.

Mr. Mercado: Q. I will show you Government's Exhibit 14 For Identification; and ask you if you have ever seen that document before.

A. Yes; I have fifty or sixty copies of this document at the present time in my office. It purports to be "The Acceptance Speeches of William Z. Foster and Benjamin Gitlow," in the 1928 Presidential election campaign. This book was widely sold and circulated by the Communist Party in Los Angeles. [122]

Q. I will ask you if you have read the document. A. Yes, I have.

Q. I will ask you if this pamphlet entitled, "Acceptance Speeches William Z. Foster and Benjamin Gitlow," Government's Exhibit No. 14 For Identification, was distributed by the Communist Party as representing the acceptance speeches of Mr. Foster and Mr. Gitlow in the 1928 election campaign.

A. Yes; that was distributed by the Workers Communist Party in 1928.

Q. Was this document distributed subsequent to that time also?

A. That document was in existence for years

(Testimony of William F. Hynes.)

after. It was on the shelves of the bookstores to be had.

Q. Do you know if this book received wide circulation in 1928?

A. Well, it was used for the 1928 election campaign; I cannot state the extent of the circulation; I know there were several copies in the book stores for sale if you wanted to get them.

Mr. Mercado: I will offer this in evidence as Government's Exhibit 14.

(Document was marked "Government's Exhibit No. 14"; and the excerpts therefrom, "14A.")

U. S. EXHIBIT NO. 14-A

ACCEPTANCE SPEECHES

of

WILLIAM Z. FOSTER

and

BENJAMIN GITLOW

Of The

WORKERS (COMMUNIST) PARTY

National Election Campaign Committee
Workers (Communist) Party

Published for the National Election Campaign Committee, by Workers Library Publishers, 35 East 125th Street, New York, N. Y.

1928

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 14-A, continued)

Acceptance Speeches

Of

William Z. Foster and Benjamin Gitlow.

"REPORT OF THE
COMMITTEE ON NOMINATIONS

By Robert Minor,
Chairman

Page 7.

"Comrades: Your committee on nominations has reached a unanimous recommendation. The committee is quite conscious of the fact that the nominations of candidates to bear the red flag of working-class revolution, the flag of Communism, in a national campaign, is a very serious one. The purpose of the Communist Party in making nominations is utterly different from the purpose of the Republican Party, the Democratic Party or the so-called Socialist Party in choosing standard-bearers. We are not choosing men or women for the purpose of administering in a smooth manner the machinery of the capitalist state. In choosing the representatives of our Party to go before the masses we are choosing men or women who will mobilize the working class against the capitalist state, against the ruling class, for the overthrow of the present form of society and for the establishment of a revolutionary state—purposes utterly antagonistic to the purposes for which the American democracy, so-called, was formed."

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 14-A, continued)

Acceptance Speech of William Z. Foster

(and Benjamin Gitlow)

Page 11-12

"Our Party, different from the Socialist Party, creates no illusions amongst the workers that they can vote their way to emancipation, that they can capture the ready-made machinery of the state and utilize it for the emancipation of the working class. On the contrary, we must utilize this campaign to carry on a widespread and energetic propaganda to teach the workers that the capitalist class would never allow the working class peacefully to take control of the state. That is their strong right arm and they will fight violently to the end to retain it. The working class must shatter the capitalist state. It must build a new state, a new government, a workers' and farmers' government, the Soviet Government of the United States. (Applause).

"No Communist, no matter how many votes he should secure in a national election, could, even if he would, become president of the present government. When a Communist heads a government in the United States—and that day will come just as surely as the sun rises (Applause)—that government will not be a capitalistic government but a Soviet government, and behind this government will stand the Red Army to enforce the Dictatorship of the Proletariat. (Applause.)"

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 14-A, continued)

Acceptance Speeches

of

William Z. Foster and (Benjamin Gitlow)

Page 13.

" * * * Our Party is a revolutionary Party. It aims not simply to ease conditions a bit under capitalism for the workers but to abolish capitalism altogether. (Applause)."

Acceptance Speech of William Z. Foster

(and Benjamin Gitlow)

Pages 13-14.

" * * * Although we advocate actively our immediate demands, we must always do it in this sense: that the workers should fight and struggle for these demands in the present period but that they must educate and organize themselves to put into effect eventually the full Communist program —the abolishment of the capitalist system itself and the establishment of a Workers' and Farmers' Government."

Acceptance Speeches

of

William Z. Foster (and Benjamin Gitlow)

Page 17.

"Defend the Soviet Union

"Especially in this connection must we under-

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 14-A, continued)

take to mobilize the masses of workers in defense of the Soviet Union. Today the Soviet Union advances with giant strides. It is making tremendous progress in building its industries, in establishing a socialist commonwealth in the face of the most tremendous difficulties. The very existence of the Soviet Union is a menace to the capitalist order the world over. It is an inspiration to the workers of the world, a living proof of the feasibility of the proletarian revolution. The capitalists of every country are determined to destroy the Soviet Union at all costs. They want to wreck its working-class government and seize its great natural resources. And now, under the leadership of Great Britain and with the most active participation by the United States, slowly, systematically they proceed with their mobilization of forces. They are awaiting the opportune time to strike at the Soviet Union with all their massed power."

Acceptance Speeches
of
William Z. Foster (and Benjamin Gitlow.)
Page 18.

" * * * In the last few years, in all the important countries, revolutionary Communist parties have been built up. They have sunk their roots deep among the masses. Under the leadership of the

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 14-A, continued)

Communist International they are mobilizing their forces. The power of this great movement constantly grows. When the international capitalist class, when the imperialists of the world, assisted by their social-democratic lackeys, deem the time opportune and strike at the Soviet Union the blow they are now preparing, they will wake up to a crushing defeat. When that war begins, the Communist International and the millions of workers throughout Europe and other countries that follow its lead will not simply adopt a defensive policy, they will not merely seek to stop their governments from attacking the Soviet Union. On the contrary, they will put into effect the great Leninist strategy. They will turn the imperialist war against the Soviet Union into a civil war of the workers against capitalism. They will destroy the capitalist order and begin the building of the proletarian society. (Applause.)"

Acceptance Speeches

of

William Z. Foster (and Benjamin Gitlow)

Page 29.

"Only the Workers (Communist) Party offers a program capable of organizing the workers for their everyday struggles and to prepare them for the revolution * * * ".

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 14-A, continued)

Acceptance Speeches

of

William Z. Foster (and Benjamin Gitlow)

Page 30.

"The Presidential election campaign must be utilized definitely for the building of our Party, and its press. The campaign will be a failure if we do not succeed in doubling the membership of the Workers (Communist) Party. (Applause.) And all that I have said about the necessity of building the Workers (Communist) Party applies with equal force to the building of the Young Workers League. (Applause.) * * * "

Acceptance Speeches

of

William Z. Foster (and Benjamin Gitlow)

Page 31.

"* * * Let us then build our Party in the daily struggles and in preparation for the revolution. Let us make our Party into a worthy brother of the Communist Parties of the Soviet Union, Germany, France, England, Czecho-Slovakia, China, and other countries, which under the leadership of the Communist International, are gradually mobilizing the working masses of the world for the overthrow of world imperialism and the establishment of the International Socialist Republic. (Applause)."

(Testimony of William F. Hynes.)

(U.S. Exhizit No. 14-A, continued)

Acceptance Speeches

of

(William Z. Foster and) Benjamin Gitlow.

(Page 47)

"* * * We know that you can, that you will do it. that you will work, that you will fight, and that we will take many a step to bring us nearer to victory for the cause of the Communist International in the United States—for the cause of the whole American working class and its allies in the decisive revolutionary battle against the Wall Street imperialists. (Applause.)"

Acceptance Speeches

of

(William Z. Foster and) Benjamin Gitlow.

(Pages 35-36)

"Our Party is an international party, our Party fights imperialist wars, our Party joins hands with the workers and toilers of all countries in defense of the exploited and toiling masses everywhere, and we declare that in the event of a war we will utilize the war to mobilize the workers, to mobilize the farmers, to mobilize the masses to make the war the burial-ground for capitalism not only in this country but also in every other country in the world. (Applause.)"

[Endorsed]: U. S. Ex. No. 14-A Filed Dec. 8, 1939.

(Testimony of William F. Hynes.)

Mr. Mercado: Q. I will show you a pamphlet entitled, "The Platform of the Class Struggle," Government's Exhibit 15 For Identification; and ask you if you have ever seen that document before.

A. Yes; this is a document that could be purchased in the Communist bookstores during the 1928 campaign. I have read the document, and I have any number of copies that were seized in raids on Communist Party headquarters.

Q. I will ask you if you know of your own knowledge that this pamphlet entitled, "The Platform of the Class Struggle," Government's Exhibit No. 15 For Identification, was distributed by the Communist Party as their official statement of the platform of class struggle for the Workers Communist Party of the United States in 1928.

A. It was. [123]

Mr. Andersen: I will object to that. I believe there has been an insufficient foundation laid for this witness to answer the question; he has not been qualified as an expert on that subject at all.

The Court: What have you in mind with respect to qualifications?

Mr. Andersen: He has testified, as I recall his answer to the last question, that it is an official publication of the Communist Party. I do not believe there is sufficient foundation laid for this witness to answer such a question as that.

The Court: Read his question and answer. (Rec-

(Testimony of William F. Hynes.)

ord read by the reporter.) The question and answer stand. You may develop that on cross-examination.

Mr. Mercado: I will offer this in evidence and will ask that it be marked as a Government's Exhibit.

The Court: It may be admitted and marked.

(Document marked "Government's Exhibit No. 15"; and the excerpts therefrom, "15A.")

U. S. EXHIBIT NO. 15-A

THE PLATFORM OF THE CLASS STRUGGLE

By

Workers Library Publishers

35 East 125th Street

New York, N. Y.

Published 1928

Platform of the Workers Party

Page 11.

"President Coolidge summed up in the following way his picture of American capitalism: 'Those are some of the economic results which have accrued from the American principles of reliance upon the initiative and the freedom of the individual. It is the very antithesis of Communism.'—And President Coolidge is right. American capitalism as it is—with all its economic, political, and moral results—is the very antithesis of Communism. There is no other alternative. The issue is capitalism or Com-

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 15-A—continued.)

munism. The Workers (Communist) Party of America declares itself the deadly enemy of capitalism. It has as its aim the overthrow of capitalism, the establishment of a workers' and farmers' government, the establishment of a Communist society in which the means of production will not be the private property of the few, a society which will not be based on profit but on labor, which will not be founded on class divisions, which will eradicate both imperialist wars and class wars, which will be able to eliminate poverty."

Platform of the Workers Party
Page 33
First Demand

"* * * * The solidarity of the working class of all countries must be with the only Workers' Republic in the world.

Demands

"1. Defend the Socialist Republic of the Soviet Union, the champion of the cause of the working class of all countries, against the conspiracies of the capitalist powers."

Platform of the Workers Party
Page 34

"VII. Capitalist Democracy and the Govern-

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 15-A—continued.)
ment-Strikebreaker.

"Many workers foster illusions as to the possibility of achieving their emancipation from the oppression and exploitation of capitalism through the election of a majority of the members of the legislative bodies and executive officials of the capitalist government. The American Federation of Labor and the Socialist Party help to maintain these dangerous and futile illusions. The national platform of the Socialist Party states: 'By intelligent use of the ballot, aided if need be by industrial action, all class divisions and class rule can be abolished.' It is one of the foremost duties of the Communists to destroy such illusions and to expose all those yellow Socialist misleaders of the workers who help to create these illusions.

"The present government is a government of the capitalists. It cannot be transformed into a government of the working class, and its sole purpose is to defend the interests of private property and oppress the workers, working farmers, the Negro masses, and the colonial peoples.

"The Constitution of the United States was drawn up by the bankers, big landowners, and rich merchants of 1787, admittedly against the working masses. * * *"

Platform of the Workers Party
Pages 37-38

"The working class in its struggle for emancipa-

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 15-A—continued.)

tion cannot reform or 'take over' the present apparatus of government. The proletarian revolution will destroy this apparatus, and will build its own based on the factories as units of production and not on territorial congressional districts. The State form of the rule of the working class will be the councils of the workers, which will serve not as 'talking shops' but as working bodies uniting legislative and executive power. This Soviet form of government constitutes the only real democracy for the overwhelming majority of the people, for the toiling masses.

Demands

"1. Abrogation of government by injunction.

2. Prohibition of the use of guards, gunmen, deputy sheriffs, militia or Federal troops in labor struggles.

3. Unrestricted right to organize, to strike, and to picket. Unrestricted right of free speech, free press, and free assemblage for the working class.

4. Abolition of the Senate, of the Supreme Court, and of the veto power of the President."

Platform of the Workers Party

Pages 39-40.

" * * * But it is a dangerous illusion to think that the workers can assume power by electing more and more members of Congress or executive of-

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 15-A—continued.)

ficials. The workers can never seize power by the mere means of the ballot. Only by revolution can the working class swing into power. The most important aim of participation in election campaigns is the mobilization of the working masses for the struggle against the bosses and for the political organization of the working class in preparation for the struggle for power. * * *"

The Platform of the Workers Party
Page 62.

"* * * But even the realization of all these demands would not liberate the working class from the double yoke of capitalist exploitation and oppression. Only the full realization of the entire program of the Communist Party can bring about the emancipation of the working class. The Communist Party has the following aims:

"The formation of the proletariat into a class; its separation from other classes; the development of its consciousness, organization, and fighting capacity;

"The organization of a mass Communist Party to lead the struggles of the working class against all capitalist parties;

"The representation of the most general international interests of the working class as a whole as expressed in the principles and practice of the Com-

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 15-A—continued.)

munist International;

"The overthrow of capitalist rule;

"The conquest of political power by the working class and the establishment of the Dictatorship of the Proletariat."

[Endorsed]: U. S. Ex. No. 15-A. Filed Dec. 8, 1939.

Mr. Mercado: Q. I will show you Government's Exhibit 16 for Identification; and will ask you if you have seen that document before.

A. Yes; this document entitled, "A B C of Communism,"—I have seized a number of copies of this document in the Communist Party headquarters at 322 West Second Street, and also secured copies of this document in the Simpson Building, on a search, in 1930, in Los Angeles. This book, at that time, was the official circulation by the Workers Party. I remember I purchased a couple of copies for myself.

Q. When you have mentioned, in your testimony in connection with these exhibits, street addresses, all of those addresses relate to Los Angeles, in Los Angeles County, California?

A. Yes, sir.

Q. I will show you a pamphlet entitled, "The International of Youth," Government's Exhibit 17 for Identification; and ask you if you have seen that document before. [124]

(Testimony of William F. Hynes.)

A. This is a magazine that is sold and circulated by the Communist Party bookstores. I have purchased a number of copies, off and on, for a number of years. It was published in England.

Q. I will ask you if this pamphlet, "The International of Youth," Government's Exhibit 17 for Identification, was distributed as an official publication of the Communist Party, within your own knowledge.

A. It was distributed as an official magazine of the Young Communist Party in and around Los Angeles, and sold as official Communist literature.

Mr. Mercado: I will offer this in evidence, your Honor.

The Court: It may be admitted and marked.

(The document was marked "Government's Exhibit 17"; and excerpts therefrom "17A.")

U. S. EXHIBIT NO. 17-A

THE INTERNATIONAL OF YOUTH

(Organ of the Executive Committee of the Young Communist International)

Published by

International Publishing House of the Young Communist International

c/o Young Communist League

38 Great Ormond Street, London, W. C. 1

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 17-A—continued.)

The International of Youth
Pages 5-6

"3. The young and comparatively weak Young Communist League has come out honourably from its baptism of fire and shown itself equal to the events. It completely identified itself with the Party policy concerning the political extension and intensification of the General Strike and the exposure of the Right traitors and 'Left' capitulators. At the same time the Y. C. L. was able to supplement this general policy with the right slogans for the working class youth. These slogans were:

"All young workers into the strike. Representatives of the working class youth in the strike committees and Councils of Action. Fraternisation between soldiers and strikers. United front of the working class youth."

The International of Youth
Page 42
Seventh Congress of the Russian Y.C.L.

"Whereas at present other Young Communist Leagues have to fight against their own bourgeoisie, fight for their liberation, whereas they have to train the youth in the spirit of consciousness of the necessity of destroying the bourgeois State power, and whereas from this aspect the Y.C.L. has to recruit the youth into its ranks and educate them with the Russian Y.C.L. things are quite different."

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 17-A—continued.)

The International of Youth
No. 51

"The Bolshevisation slogan, which the last Enlarged Executive of the Y. C. I. issued in the beginning of 1925, has not remained on paper. This Plenary Executive could not have been so concrete, could not have given such prominence to the real youth questions arising out of the everyday life of our Leagues, had not the work of the last Enlarged Executive provided a basis for actual mass work by the Y. C. L.

VUYOVITCH."

[Endorsed]: U. S. Ex. No. 17-A. Filed Dec. 8, 1939.

Mr. Mercado: Q. I will show you Government's Exhibit 18 in evidence; and ask you if you have ever seen this document before.

A. This document entitled, "Why Communism?" has been printed in several forms; it was one of the most widely distributed pamphlets ever distributed by the Communist Party. Several editions were published by the Western Workers Publishing Company here in San Francisco, and circulated, I think, during the leadership here on the Coast of Sam Darcy—a widely-circulated magazine in Los Angeles. When we arrested any Communist member, we were more likely to find this

(Testimony of William F. Hynes.)

document than any other one. In recent years, it was widely sold, in the bookshops of Los Angeles, by the Communist Party.

Q. You have read the book?

A. I have read the book, yes.

Q. I show you a pamphlet, Government's Exhibit 19 for Identification, and ask you if you have ever seen that pamphlet before.

A. Yes, I have seen this pamphlet and I have purchased six or seven copies in the Communist Party bookshop, I think it is 228 or 230 South Spring Street, in Los Angeles. Its title is: "New Frontiers, 1937."

Q. I will ask you if you know, of your own knowledge, this pamphlet [125] entitled, "New Frontiers," Government's Exhibit No. 19 for Identification, was distributed as one of the official pamphlets of the Communist Party.

A. It was distributed as one of the official series of yearbooks by the Young Communist League.

Mr. Mercado: We will offer this in evidence, your Honor.

The Court: It may be admitted and marked.

(Document marked "Government's Exhibit No. 19.")

Mr. Mercado: Q. I will show you a pamphlet here, and ask you if you have ever seen that pam-

(Testimony of William F. Hynes.)

phlet before. Do not testify in connection with that.

Mr. Andersen: Is that a new one?

Mr. Mercado: I am just asking if he has ever seen it before.

The Witness: A. Yes, I have seen it before.

Mr. Mercado: Q. I will ask you if you have seen this before and under what circumstances and where.

A. Yes, I have seen this pamphlet entitled, "Statutes, Theses and Conditions of Admission to the Communist International, Adopted by the Second Congress of the Communist International July 17th to August 7th, 1920." This document was taken in a raid from the Communists in the Bryson Building, on October 16, 1928, when we arrested several members of the Communist Party. I have seen several other copies of this. However, this book was not widely circulated or sold. I have taken some off of several leaders, at different times of their arrest. This cover on the outside was put on by myself to preserve the book.

Mr. Mercado: I will ask that the pamphlet entitled, "Statutes, Theses and Conditions of Admission to the Communist International," be marked Government's Exhibit for identification.

The Court: It may be marked.

("Statutes, Theses and Conditions of Admission to the Communist International, July 17 to August 7, 1920," was marked "U. S. Exhibit No. 26 for Identification.") [126]

(Testimony of William F. Hynes.)

Mr. Mercado: Q. I will show you a pamphlet and ask you if you have ever seen that pamphlet before. A. Yes, I have.

Q. Where and under what circumstances?

A. I have seen a copy of this, "Programme and Constitution," of the Workers Party of America," when I joined the organization.

Mr. Andersen: What is the date of that?

The Court: Q. Has it a date?

A. It is December 24, 25, 26, 27, 1921, amended at National Convention, Chicago, Illinois, December 30-31, 1923, and January 1, 1924. As I say, I received a copy of the "Program and Constitution" when I joined the organization. This particular copy, however, was taken on the arrest of Sam Globerman, at 322 West Second Street, on August 6, 1927. I recall specifically receiving a number of copies of this "Program and Constitution," in 1925 or 1926, on the ground floor of the Simpson Building, I think it is on Third and Spring Street, in Los Angeles. I know that I have about 18 or 20 copies of this, which was circulated by the parties at that time.

Mr. Mercado: Q. Have you read the pamphlet?

A. Yes, I have read it. I am not certain whether that is the exact copy that I had when I joined the Party; I am not certain that it is.

Q. From your examining of the document, can you say that this document represents the program and policy and states the constitution of the Work-

(Testimony of William F. Hynes.)

ers Party of America, at or about the years 1921 to 1924?

A. I have read the document; and it does embrace the program, as I understood it, when I was in it.

Mr. Mercado: I will offer this document in evidence as Government's exhibit next in order.

The Court: It may be admitted and marked.

(Document referred to marked "Government's Exhibit 27.")

U. S. EXHIBIT NO. 27

PROGRAM

AND

CONSTITUTION

Workers Party of America

[Emblem]

Adopted at National Convention, New York City, December 24-25-26-27, 1921

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PROGRAM OF THE WORKERS PARTY OF AMERICA

The capitalist world, which in 1914 boasted of its

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

great wealth, of its gigantic powers of production, of its smoothly running system of business, of the power and security of its government, is sinking into decay.

Hundreds of billions of wealth have been destroyed by the Great War. The financial structure of many European countries is nearing the point of collapse. Industries produce haltingly or have come to a stop altogether. The capitalist governments try one trick after the other to maintain their power in the face of the wrath of the suffering masses.

The victorious and vanquished countries of the world war present a picture that is different only in the degree of the suffering and misery which is the lot of the workers. Central Europe is a mass of hungry men, women and children. In England, France and Italy an army of workers numbering millions in each instance have no work and daily come closer to the same conditions. In the United States great strikes expressing the resistance of the workers to the capitalist effort to lower their standard of living follow one upon the other. The war clouds still hover over the world and threaten again to engulf mankind in the abyss of bloodshed and destruction.

Soviet Russia alone has freed itself from the forces of destruction, which are inherent in the capitalist system and which threaten the destruction of civilization. In Soviet Russia the foundation has been laid for the new social order and there

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

is being erected that structure which will forever free mankind from the suffering, bloodshed and destruction of the capitalist system.

The Class Struggle

The whole capitalist system of production rests upon the robbery and enslavement of the workers. In the United States, the Morgans, the Rockefellers, the Schwabs, the railroad kings, the coal barons, the industrial magnates own the means of production and the workers cannot secure work without their consent. They are unable to earn the means of buying food, clothing and homes to live in without the permission of these financial and industrial kings. The owners of capital are so many czars and kaisers, each with a group of workers ranging from a few hundreds to tens of thousands whose right to life they hold in their hands thru their control of the workers' opportunity to earn a living.

The conditions on which the workers are permitted to work is the enrichment of the capitalists. They must work for wages which will leave in the hands of the railroad kings, the coal barons and industrial magnates a large share of what they produce or otherwise they are denied employment. They must add more millions to Rockefeller's billions, they must create new hundreds of millions for Morgan, they must add to the swollen fortunes of the financial and industrial lords of the country.

In the Declaration of Independence, a document underlying the institutions of the country, it was

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

laid down as a principle that all men are endowed with certain inalienable rights, and "that among these are life, liberty and the pursuit of happiness."

These rights do not exist for the thirty million American wage workers and their families. The workers of this country are industrial slaves. They cannot work and earn a living without the consent of the capitalists. That consent is given only upon the conditions that they make the capitalists richer.

It is the struggle against these conditions which is continually breaking out in strikes. The history of this country during the last half century is full of examples of the rebellion of the workers. The capitalists continually seek to secure greater profits for themselves, while the workers struggle to improve the conditions of their life by forcing the capitalists to pay higher wages and to grant better working conditions. The result is the class-struggle which manifests itself on all sides in the United States.

The great strikes at Pullman, Homestead, McKees Rocks, Lawrence, Mass.; Ludlow, Colo.; Calumet, Mich.; Messaba Range, the steel strike and the miners' strike in 1919, the West Virginia miners' strike, are all outstanding incidents in the class struggle, which is being fought daily in every industrial center in the United States.

Since the end of the few months of prosperity

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

for the financial and industrial magnates, which followed the close of the war, the capitalists have been fighting to put upon the working people of this country the burden of the destruction of wealth during the war. They are endeavoring to make the working people, who paid the cost of the war in blood, pay also for the destruction and waste of the war in a lower standard of living. They are trying to make the working people pay by forcing them to work for lower wages and longer hours.

The result has been that the struggle between the workers and the financial lords and industrial magnates has grown even more bitter. The workers are fighting against a lower standard of living. They refuse to eat poorer food, to wear poorer clothes, to live in poorer homes, to have less opportunity for the education of their children. The garment workers' strike, the miners' strike, the railroad shopmen's strike, the textile workers' strike, are evidence of the resistance of the workers to a bitter industrial slavery, resistance which has found expression in such open, violent clashes as the armed struggle in West Virginia and at Herrin, Ill.

The mass power of the exploited class is its strongest weapon in this struggle against the capitalists. If during the strike of the coal miners, the railroad shopmen, and the textile workers, the whole working class had united in mass meetings and mass demonstrations against the use of the courts and soldiers in the strikes, they could have, through

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

such mass pressure, compelled the government to withdraw the troops and recall the injunctions.

When in 1916 the railroad workers through the threat of general strike, compelled the Congress to pass the Adamson eight-hour day law, they demonstrated the strength of the direct mass power of the workers.

The West Virginia miners who marched into Mingo County to compel the coal barons and their armed thugs to respect the rights guaranteed the miners under the constitution and the laws of West Virginia and the nation made use of their mass power to establish these rights.

The conflict between the workers and the capitalists cannot be harmonized or compromised while the railroad kings, the coal barons and the industrial magnates own and conttrol the factories, mines, mills and railroads. It can only be ended by abolishing the capitalist system.

The Workers Party will enter into every struggle involving the interests of the exploited class and through its slogans and programs of action will endeavor to develop the mass power of the workers. It will seek to unite ever greater numbers of workers in a common struggle so that each struggle will come to be, not a struggle of a small group of workers against a section of the capitalist class, but a struggle of the working class against the capitalist class.

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

The Government

In the struggle between the workers and the industrial magnates, the coal barons and the railroad kings, the government is openly on the side of the capitalists.

The miners of West Virginia, fighting for the right to organize against the armed thugs of the coal barons, were forced into submission by the army acting under the orders of the Federal Government.

The railroad workers have had worse working conditions and reductions of wages forced upon them by the Railway Labor Board, created by the United States government to help the capitalists beat the workers into submission. This Board has shown the bankruptcy of capitalism in the declaration, that the railroads cannot pay a "living wage," thus also placing all the power of the government behind the capitalist drive to force down the wages of the workers below the point of a decent existence.

In the miners' strike and the shopmen's strike, the Harding administration used all its power to break the strike. The States Governments filled the strike centers with soldiers to intimidate the workers and force them back to work.

Courts everywhere are issuing injunctions against strikers. In Kansas an Industrial Court denies the workers the right to strike at all. The Supreme Court, through the decision in the Coronado case, gives the capitalists a club with which to destroy

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

any union which dares to strike for better wages and working conditions. Through the Daugherty injunction the government swept aside all the rights of the workers with one stroke of the pen of a capitalist judge.

Government officials conspire with the exploiters of labor to put militant leaders of the working class movement in prison. The Mooney frame-up, the Sacco-Vanzetti prosecution and a score of similar cases show how the government works in close cooperation with the employers to rid them of individuals and movements threatening their interests.

The Capitalist state, that is, the existing government, municipal, state and national, is the organized power of the capitalist class for suppression of the exploited and oppressed workers. A democratic president, Cleveland, used federal troops against the Pullman strikers; a republican president, Roosevelt, threatened the hard coal miners with the iron fist of the government in 1902; another democratic president, Wilson, used all the governmental power, from courts to soldiers, against the steel workers and coal miners in 1919; and the republican president, Harding, did the same in the miners' and shopmen's strikes of 1922.

The workers cannot wage a successful struggle against capitalist exploitation and oppression, while the government remains in control of the capitalists. The Workers Party therefore declares that the class struggle is a political struggle, a struggle

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)
for the governmental power.

Imperialism

The government of the United States is not only an instrument of aggression against the workers in the class struggle in this country. It is also the instrument through which the capitalists fight their battles against the competing capitalists of other countries.

In the United States capitalism has reached a high degree of development. At this stage of development capitalism produces goods, predominantly tools, machinery, rails, locomotives, the products of iron and steel, which under the conditions of capitalist production must be sold in foreign markets. Coincident with this development of capitalism it becomes increasingly difficult for the capitalists to invest their new capital profitably in home industry. In order to prevent the breakdown of the whole capitalist system, the capitalists must sell their surplus goods and find profitable investment for their surplus capital. They are also faced with the need of finding new sources of raw material for the highly developed capitalist industries. These needs produce the policy of imperialism and have developed American imperialism.

American capital has been invested in Mexican mines and oil fields. It is being used to exploit the resources of China. It is invested in loans to the countries of West Indies, Central and South Amer-

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

ica. These investments create markets for the surplus products of American industry as well as profitable use for new capital created for the capitalists by the exploited American workers.

The power of the government is openly used by the financial lords of Wall Street to open up weaker countries for these investments and to protect their investments.

Since the Spanish-American war, in which this country acquired the Philippines and Porto Rico, American imperialism, "Dollar Diplomacy," has overthrown the governments of Haiti and Santo Domingo and subjected the people of those countries to the bitterest oppression in order to safeguard the loans of Wall Street. Nicaragua has been reduced to vassalage. Cuba is a protectorate of the United States in the interests of the Sugar Trusts. The Mexican government is coerced to agree in the interests of oil and banking capital.

The World War, which drenched Europe in blood and in which millions of workers lost their lives, was the consquence of the imperialist rivalry between the capitalist governments of the world.

Although capitalism still lies shattered as a result of that war, a new imperialist struggle is already under way, which points to a new war and greater suffering and misery for the masses of the world.

After the Washington conference the imperialists of the world endeavored to harmonize their differ-

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

ences through division of the loot of the Pacific in order that they might reduce the burden of naval armament. This conference has, however, proven a complete fiasco and already the nations participating in it are repudiating its decisions. In spite of all this conference could do, the United States is still in conflict with England over the division of the oil fields of the world and the rivalry between the United States and Japan constantly grows sharper.

The necessity which compelled the capitalists of each nation to hurl tens of millions of men into the death struggle upon the European battlefields has not been abolished. Driven by the same necessity, the American capitalists are using the governmental power to advance their interests in all parts of the world.

Imperialism with all its horrible consequences in the crippling and maiming and killing of the workers and the great destruction of wealth can only be ended through the workers wresting the power of the government from the hands of the capitalists.

Election Campaign and American Democracy.

The Workers Party will not foster the illusion, as is done by the yellow Socialists and Reformists that the workers can achieve their emancipation from the oppression and exploitation of capitalism through the election of a majority of the members of the legislative bodies of the capitalist government and the executive officials of that government,

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

and by using the existing government to establish the new social order.

The Constitution of the United States was so drafted as to protect the interests of the exploiters of the workers. The merchants, the bankers, and land-owners of 1787 wrote into the Constitutions provisions which they hoped would forever protect the interests of their class.

A majority of the people of the United States cannot change the Constitution. The vote of two-thirds of the members of the legislators of three-fourths of the states is required to pass a constitutional amendment. One-fourth of the states, in which there may live only one-fortieth of the population can prevent any change of the fundamental law of the land.

The Constitution contains a series of checks and balances which are intended to make it impossible for a majority antagonistic to the ruling class to make its will effective. The members of the House of Representatives are elected every two years, the President every four years, the members of the Senate every six years, so that a complete change of the government can be made only through elections spread over six years. The Senate has a veto over the decisions of the House, the President can veto the actions of both bodies, and over and above the House, the Senate and the President stands the Supreme Court, which can nullify laws which all three unite in passing.

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

The character of the Constitution as a document intended to protect the bankers and industrial magnates of the country has been made clear in many decisions under its provisions. Child labor laws, laws regulating hours of labor, and protecting life and health of the workers, and minimum wage laws have been declared void. A weapon to strike down organized labor has been found in its clauses as shown in the Coronado decision.

In addition to the protection which the Constitution gives to the coal barons, railroad kings, and the industrial and financial lords, millions of workers are disfranchised in this country through naturalization laws. Hundreds of thousands of citizens cannot vote because of residential qualifications, which through the necessity of earning a living wage make it impossible for them to comply with.

The capitalists control thousands of newspapers through which they shape the ideas of the masses in their interests; they control the schools, the colleges, the pulpits, the moving-picture theatres, all of which are part of the machinery through which the capitalists shape the minds of the workers.

When it serves their purpose the capitalists do not hesitate to expel members of the legislative bodies elected by working class votes. This was done in the case of the Socialist members of the Cleveland City Council and a member of the School Board of that city. These representatives, elected by the workers, were expelled in violation of all law

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

to stifle their protests against the imperialist war. The expulsion of the Socialist assemblymen of New York state is a case of similar character.

Under these conditions to talk of "democracy" is to throw sand into the eyes of the workers. The much-talked of "American democracy" is a fraud. Such formal democracy as is written into the Constitution and the laws of the country is camouflage to hide the real character of the dictatorship of the capitalists.

While recognizing the impossibility of the workers winning their emancipation through the use of the machinery of the existing government, the Workers Party realizes the importance of election campaigns in developing the political consciousness of the working class. The first step toward revolutionary political action by the working class must be made through independent political action by the workers in election campaigns. The Workers Party will therefore participate in election campaigns and use them for propaganda and agitation to develop their political consciousness of the workers.

It will endeavor to rally the workers to use their power to make real the rights which the fraudulent American democracy denies them. It will use them to carry on the struggle for the right of labor to create a revolutionary political party and for such an organization to function openly in the political life of the country.

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 27—continued.)

The Workers Party will also nominate its candidate and enter into election campaigns to expose the fraudulent character of capitalist democracy and to carry on the propaganda for the soviets. It will use the election campaigns to rally the workers for mass political demands upon the capitalist state. Its candidates, when elected to office, will use the forums of the legislative bodies for the same purpose.

The Labor Party

The open use of the governmental power against the workers and farm laborers, tenant farmers and working farmers of this country has developed a widespread movement for the formation of a labor party. This movement is an expression of the awakening class consciousness of the American workers.

The Workers Party favors the formation of a labor party—a working-class political party, independent of, and opposed to all capitalist political parties. It will make every effort to hasten the formation of such a party and to effect admittance to it as an autonomous section.

The mighty centralization of power of the government of the United States, which was brought about by the war, the offensive of the capitalist class, which resulted from the economic crises, make it necessary for the workers to defend themselves politically. The change in the wages of the skilled and unskilled workers have brought them nearer to

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

the same conditions of life, the taking away of the privileges of the "aristocracy" of labor by the capitalist power, the assimilation of the foreign born, the organization of the alien workers as militant trade unionists, have for the first time in the history of the American labor movement produced a uniformity of the working class which makes possible the organization of a labor party.

A real labor party cannot be formed without the labor unions and organizations of exploited farmers, tenant farmers and farm laborers must be included. The Workers Party will direct its propaganda and educational work to the end of arousing a mass sentiment of the labor party in the labor unions to secure the formation of such a party.

Labor Unions

The division of the organized workers into craft unions is one of the greatest obstacles to the progress of the workers in this country against capitalism.

During the past two years organized labor has been dealt many heavy blows by the employers, who are bent on destroying or at least weakening so as to make ineffective the organization of the workers. In spite of this desperate struggle, each craft has fought alone. There has been no united resistance, no solid united front against the industrial kings, who are striving to reduce the wages and make worse the working conditions of the workers. The example of the seven railroad shop unions, strik-

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

ing while nine other railroad unions continued to serve the railroad kings and help them to whip their fellow workers is but one striking example of a situation which exists everywhere in the ranks of organized labor in this country.

In addition to the weakness of the craft form of organization the labor unions suffer from a fundamental error of policy. In place of waging a class struggle to free themselves from the grip of the capitalists they have pursued the policy of attempting to come to an agreement with the capitalists on the basis of "a fair day's pay for a fair day's work."

No such compromise with capitalism can be permanent. The hunger of the capitalists for greater profits drives them to seek to lower the standard of living of the workers when they have the upper hand. On the other hand when the workers are in strong position their need and their desire for more of the good things they produce results in greater demands upon the capitalists.

The gain of the workers during the war time scarcity of labor and their present losses indicate the futility of the hope that the class struggle can be settled through a compromise.

The labor unions must be revolutionized; they must be won for the class struggle against capitalism; they must be inspired with a new solidarity and united to fight a common battle. The existing craft unions must be amalgamated and powerful

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

industrial unions created in each industry. The reactionary official bureaucracy of the unions must be supplanted by the shop delegates system.

The Workers Party declares one of its chief immediate tasks to be to inspire in the labor unions a revolutionary purpose and to unite them in a mass movement of uncompromising struggle against capitalism. It will use all the resources at its command to educate the organized workers to an understanding of the necessity of amalgamation of the craft unions into industrial unions.

This end cannot be achieved if the revolutionary workers leave the existing unions to form feeble dual organizations. The work of transforming the labor unions must be carried on inside of the existing unions. The members of the Workers Party will carry on their work within the existing unions to awaken the spirit of class struggle and to bring about a reconstruction of the organization form so as to make of the unions powerful organized centers of the workers' struggle against capitalism.

The Workers Party declares its support *fo* the Red Labor International and adopts as its program for the struggle within the unions the theses of the Red Labor International on the American Labor Unions.

The Working Farmer and Farm Laborer

The struggle of the farm laborers is the same struggle in which the industrial workers are engaged. It is a struggle against those who exploit

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

them through low wages and hard working conditions. The Workers Party will seek to organize the farm laborers into unions of agricultural workers and to unite them with their brothers in the industrial centers for the common struggle against capitalizm.

While the exploitation of the working farmer is not so apparent, he suffers in the grip of the same enemy who robs the industrial workers of the cities. The bank, which holds the mortgage on his land, the railroad which transports his product, the grain elevator or the commission house which he must use in marketing his products represent the tentacles of the same capitalist system which is robbing the industrial workers.

The interests of the working farmers, tenant farmers and farm laborers are linked together with those of the exploited industrial workers and it is the aim of the Workers Party to arouse them to a consciousness of this and to unite them with the industrial workers in a common struggle against their common exploiter.

The Negro Worker

The Negro workers of this country are exploited and oppressed more ruthlessly than any other group. The history of the Southern Negro is the history of brutal terrorism, of persecution and murder.

During the war tens of thousands of Southern Negroes were brought to the industrial centers of the North to supply the needs of the employers for

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

cheap labor. In the Northern industrial cities the Negro has found the same bitter discrimination as in the South. The attack upon the Negroes of East St. Louis, Illinois, the riot in Chicago are examples of the additional burden of oppression which is the lot of the Negro workers.

Although the influx of Negro workers in the Northern industrial centers has laid the foundation for a mass movement of Negroes who are industrial workers, because of neglect of this problem by organized labor little progress has been made in organization of these industrial workers. The Negro has despaired of aid from organized labor, and he has been driven either into the camp of the enemies of labor, or has been compelled to develop purely racial organizations which seek purely racial aims.

The Workers Party will support the Negroes in their struggle for liberation and will help them in their fight for economic, political and educational equality. It will seek to end the policy of discrimination followed by some labor unions and all other discriminations against the Negro. It will endeavor to destroy altogether the barrier of race prejudice that has been used to keep apart the black and white workers and to weld them into a solid union for the struggle against the capitalists who exploit and oppress them.

Soviets, or Workers' Councils

The experience of the workers in the struggle against capitalism has proven that the workers can-

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

not take over the ready-made machinery of the Capitalist government and use this machinery to build up a Communist society. The form of organization of the existing government, constitutional basis, its laws, the bureaucracy, which has been built up over a century cannot be used by the workers. They are all of a character to aid the capitalists in the struggle against the workers and cannot be transformed into instruments of struggle of the workers against the capitalists.

The workers' revolution in Russia, Hungary, Bavaria, the revolutionary struggle in Germany, all show that the Soviets or Workers' Councils are the organizations of the workers' power which in time of crisis arise naturally out of the previous struggles and experiences of the workers.

The Soviets are first constituted through delegates elected by the workers in the factories and labor unions. They are comparable to a general strike council, which might arise in the case of a strike embracing all the workers of a city. The local councils are federated in state or district councils and these in a national council, or Soviet, which is the supreme organ of the working class government. The Soviets carry on both the legislative and administrative work of the working class government.

The Workers Party will carry on propaganda to bring to the workers an understanding of the necessity of supplanting the existing capitalist government with a Soviet government.

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

The Dictatorship of the Proletariat

The existing capitalist government is a dictatorship of the capitalists. Today in the United States a comparatively small group of capitalist-financial and industrial kings, with headquarters in Wall Street, control the government of the United States, of the states and municipalities. Through the capitalist government this group of financial and industrial kings enforce their will upon the thirty million workers and their families.

While part of the workers are granted the hollow mockery of voting, they find that whether they vote for the Republican or Democratic candidate, in time of struggle the government is always on the side of the financial and industrial kings.

The Soviet government of the workers will, because of the same necessity—the necessity of suppressing the capitalists—be a dictatorship of the workers. The government expressing the will of the thirty million workers will openly use its power in the interests of the workers and against the capitalists.

The Goal of the Proletarian Dictatorship

It will be the task of the government of the thirty million workers of this country to take from the capitalists the control and ownership of the raw materials and machinery of production upon which the workers are dependent for their life, liberty and happiness and to establish collective ownership.

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

Together with this collective ownership the Workers' Government will as quickly as possible develop the management of the industries by the workers.

Through the establishment of this Communist system of industry the exploitation and oppression of the workers will be ended. As the power of the capitalists in industry wanes and Communism is established the struggle between the classes will disappear and the dictatorship of the Proletariat will become unnecessary and will cease to function. The government will become an instrument for administration of industry and the full, free Communist society will come into being.

The International

The Workers Party accepts the principle that the class struggle for the emancipation of the working class is an international struggle. The workers of Russia have been obliged to fight against the whole capitalist world in order to maintain their Soviet Government and to win the opportunity of rebuilding their system of production on a Communist basis. In this struggle they have had the support of the enlightened workers of every country.

The future struggles against capitalism will take the same character. In order to win the final victory in the struggle against world capitalism the working class of the world must be united under one leadership.

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(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

The leadership in the international struggle which inspires hope in the hearts of the workers of the world and arouses fear in the capitalists of every country is the leadership of the Communist International.

The Workers Party declares its sympathy with the principles of the Communist International and enters the struggle against American capitalism, the most powerful of the national groups, under the inspiration of the leadership of the Communist International.

It rallies to the call: "WORKERS OF THE WORLD UNITE."

CONSTITUTION OF THE WORKERS PARTY OF AMERICA

Article I—Name and Purpose

Section 1—The name of this organization shall be THE WORKERS PARTY OF AMERICA. Its purpose shall be to educate and organize the working class for the abolition of capitalism through the establishment of a Workers and Farmers Republic.

Article II—Emblem

Section 1—The emblem of the party shall be the crossed hammer and sickle with a circular margin having at the top, "Workers Party of America," and underneath, "Workers of the World, Unite."

Article III—Membership

Section 1—Every person who accepts the prin-

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

ciples and tactics of the Workers Party of America and agrees to submit to its discipline and engage actively in its work shall be eligible to membership.

Section 2—Applicants for membership shall sign an application card reading as follows:

"The undersigned declares his adherence to the principles and tactics of the Workers Party of America as expressed in its program and constitution and agrees to submit to the discipline of the party and to engage actively in its work."

Section 3—Every member shall join a duly constituted branch of the party if such exists in the territory where he lives or works. Applicants living in territories where the Workers Party of America has no organized branch may become members at large.

Section 4—All applicants for membership must be endorsed and recommended by two persons who have been members for not less than three months. An applicant must be present in person when his application is acted upon.

Section 5—Applications for membership shall not be acted upon finally until one month after presentation. In the meantime the applicant shall pay initiation fees and dues and shall attend all meetings. This rule shall not apply to charter members of new branches nor to those who make application to the newly organized branches during the first month.

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 27—continued.)

Article IV—Units of Organization

Section 1—The basic units of organization of the Workers Party of America shall be:

a) The Branch, to consist of not less than five members.

b) Members-at-large, who shall be connected with the nearest district organization.

c) Such special forms of local organization as may be authorized by the Central Executive Committee.

Section 2—Two or more branches in the same city shall form a City Central Committee. The City Central Committee may also include branches in adjacent territory.

Section 3—The Central Executive Committee is empowered to designate the boundaries of the district organizations (which may include more than one state or parts of state), such boundaries to be fixed with regard to economic rather than state divisions. For the purpose of carrying on parliamentary activity, the City Central Committees and branches in any state shall constitute the state organization. The entire supervision of this activity shall be assigned by the Central Executive Committee to the district organization best equipped for this purpose.

Article V—Administration

Section 1—The supreme body of the Workers Party of America shall be the Convention of the Party.

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

Section 2—Between conventions the Central Executive Committee elected by the convention shall be the supreme body of the Party and shall direct all the activities of the Party.

Section 3—The administrative power of the district shall be vested in the Annual District Convention.

Section 4—Between District Conventions the administrative powers of the district shall be vested in the District Committee elected by the District Convention. District organizers appointed by the Central Executive Committee shall be members of the District Committee and carry on their work under its supervision.

Section 5—The City Central Committee shall consist of delegates elected by the branches. Every branch shall have at least one delegate. The City Central Committee shall meet at least twice a month. The City Central Committee shall elect a secretary, executive committee and such other officers as may be found necessary. The District Executive Committee reserves the right of approval of secretary.

Article VI—Conventions

Section 1—The Convention is the supreme body of the Party, and shall be called by the Central Executive Committee at least once a year.

Section 2—Emergency conventions, with all the powers of regular conventions, may be called by the Central Executive Committee or upon demand of

(Testimony of William F. Hynes.)

(U. S. Exhibit No. 27—continued.)

District Organizations representing 40 per cent of the membership.

Section 3—The number of delegates to the National Convention shall be determined by the Central Executive Committee. Delegates shall be apportioned to the districts according to membership based upon average dues paid for the period of four months prior to call for the convention. The districts shall apportion the number to be elected by city conventions on the same basis.

Section 4—Delegates to the national convention shall be elected by district conventions. Branches in organized cities shall elect delegates to a city convention. City convention shall elect the delegates to the district conventions. The number of delegates to which each branch is entitled shall be decided by the City Central Committee according to membership cited as above. When there is no city central organization the branch shall elect delegates directly to the district convention.

Section 5—City and district secretaries and organizers shall attend the conventions of their respective units and shall have a voice but no vote unless elected as delegates themselves.

Section 6—City and district conventions may elect as their delegates members of the Party from units outside their territorial divisions.

Section 7—At the same time that the call for the convention is issued *he* Central Executive Committee shall submit to every branch for discussion the

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

Agenda and other propositions that are to come before the convention. At least sixty days before the Convention the Party Press shall be opened for discussion of important Party matters. District Committees may submit propositions to be included in the Agenda.

Section 8—Delegates to the National Convention shall be paid railroad expenses and a certain amount per diem to be determined by the Central Executive Committee.

Section 9—Delegates to district conventions must have been members of the party for one year. Delegates to National Conventions must have been members of the party for two years. Delegates to City Conventions must have been members of the party for six months.

Article VII—Central Executive Committee

Section 1—Between Conventions the Central Executive Committee shall be the supreme body of the Party and shall direct all its activities.

Section 2—The Central Executive Committee shall consist of thirteen members. Twelve shall be elected by the Convention and the N. E. C. of the Young Workers League shall elect one. The Convention shall also elect seven alternates, to fill vacancies in order of vote. When the list of alternates are exhausted the Central Executive Committee shall have the right of co-optation.

Section 3—The Central Executive Committee

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

shall elect the Executive Secretary and Chairman of the Party, and all other officers.

Section 4—The Central Executive Committee shall appoint*ed* District Organizers and all national officials. It shall create sub-committees for the proper direction of its activities.

Section 5—The Central Executive Committee shall make a monthly report of the Party activities and of Party finances, itemized by districts.

Section 6—The Central Executive Committee shall divide the country into districts in accordance with Article IV, Section 3, provided that the boundary lines of the districts shall not be changed within a period of four months prior to the national convention.

Section 7—A complete audit and accounting of all Party funds shall be made every six months.

Section 8—All press and propaganda activities shall be under the full control of the Central Executive Committee.

Article VIII—District and Subordinate Units

Section 1—The Central Executive Committee shall appoint District Organizers for each district.

Section 2—Every district organizer shall make complete reports to the District Executive Committee as to the general Party work in his district. He shall submit and carry out the instructions and decisions of the Central Executive Committee. He shall make remittances and financial statements regularly to the Central Executive Committee and

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

shall also submit financial statements to the membership in his district at least once a month.

Section 3—District conventions shall be held within thirty days of the national convention. The district convention shall elect six members to the District Executive Committee.

Section 4—These six members, together with the District Organizer, who shall be a member of the District Executive Committee with voice and vote, shall supervise the activities of the district and shall regularly submit the minutes of their meetings to the Central Executive Committee. All actions of the District Committee are subject to review by the Central Executive Committee.

Section 5—The District Executive Committee shall determine the boundaries of the city locals.

Section 6—The City Central Committee shall consist of delegates representing branches in accordance with their relative memberships. Each branch shall be represented by at least one delegate. The City Central Committee shall have supervision of all activities in the local and shall make regular reports of its work to the District Executive Committee.

Section 7—The City Central Committee shall elect a city executive committee, consisting of from 5 to 7 members, which shall act for the city central committee between meetings.

Section 8—The Branch shall consist of members, as provided in Article III, Section 1. It shall elect

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

an executive committee, branch organizer, industrial organizer, delegates to the City Central Committee, and such other officers as may be considered necessary.

Article IX—Language Sections

Section 1—Members speaking a common language other than English may organize into a "Language Branch."

Section 2—There shall be only one section in each language, and all language branches must affiliate with their respective language sections.

Section 3—All language branches shall be integral parts of the party structure in their localities, and shall perform and carry out all Party functions and obligations.

Section 4—Shortly after Party Conventions, national language conferences shall be held. Those conferences shall formulate plans for education and propaganda in their respective languages, subject to the approval of the Central Executive Committee. All actions of these conferences shall be in strict conformity with the decisions of the Party Convention and the Central Executive Committee. Expenses of these conferences shall be borne by the language sections.

Section 5—The language section conference shall elect a bureau to administer its affairs and a suitable number of alternates. The bureau shall elect the editors and officers and shall supervise all ac-

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

tivities of their respective language sections, subject to the approval of the Central Executive Committee.

Section 6—The Central Executive Committee shall have the right to disapprove the members elected by the conference to the language bureaus and fill such vacancies.

Section 7—The Central Executive Committee may appoint a fraternal member to every language section executive committee with voice but no vote.

Section 8—The bureau shall have the right to appoint district language section organizers subject to the approval of the Central Executive Committee. All organizers shall work under the supervision of the Party District Organizers in the various districts.

Section 9a)—National Language Bureaus shall translate and transmit all statements, circulars and communications addressed to the membership by the Central Executive Committee within one week after their receipt.

Section 9b)—Language branches shall purchase their due stamps directly from their national bureau, which shall purchase due stamps from the Central Executive Committee at 30 cents each, and sell same to its branches at a price determined by the Language Section conference. The branches to sell due stamps to members at 50 cents. The national office shall remit to the district organization

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

ten cents, and to the city local five cents for each stamp sold to languege sections.

Section 9c)—The National Language Bureau shall account to the Central Executive Committee regularly for all funds entrusted to it and shall make regular financial reports to the Central Executive Committee regarding all the institutions under its control. Its accounts shall be subject to the audit of the Central Executive Committee. Special assessments may also be levied by the National Language Bureaus on the membership with the approval of the Central Executive Committee.

Section 10a)—Language Bureaus and Language Sections shall have no power to suspend, expel or reorganize affiliations. All disciplinary powers are vested exclusively in the regular Party organization machinery.

Section 10b)—Language Bureaus and Sections may recommend such suspension, expulsion or reorganization to the party units having jurisdiction.

Article X—Discipline

Section 1—All decisions of the governing bodies of the Party shall be binding upon the membership and subordinate units of the organization.

Section 2—Any member or organization violating the decisions of the Party shall be subject to suspension or expulsion by the organization which has jurisdiction. Charges against members shall be made before branches, subject to appeal by either side to

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

the City Central Committee or to the District Executive Committee, where there is no city organization. Charges against a branch shall be made before the City Central Committee or before the District Executive Committee where there is no city organization. Decisions of the City Central Committee in the case of branches shall be subject to revision by the district organization. Charges against state or district organization shall be made before the Central Executive Committee.

Section 3—Each unit of the Party shall restrict its activities to the territory it represents.

Section 4—A member who desires to transfer his membership to another branch shall have a transfer card from the financial secretary or organizer of his branch. No branch shall receive a member from another branch without such transfer card and upon presentation of the card the secretary of the branch receiving same shall make inquiries about the standing of the member to the secretary issuing the card.

Section 5—All party units shall use uniform application cards, dues books and accounting records, which shall be printed by the National Organization.

Section 6—Any suspended or removed member of the Central Executive Committee shall have the right to appeal in writing or in person to the next National Party Convention.

Article XI—Dues

Section 1—Each applicant for membership shall

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

pay initiation fees of fifty cents, which shall be receipted for by an initiation stamp furnished by the Central Executive Committee. The entire sum shall go to the National Organization.

Section 2—Each member shall pay fifty cents per month in due stamps, which shall be sold to the state or district organizations at 25 cents. State or District Organizations shall sell stamps to the City Central Committee and to the branches where there is no city central committee at 35 cents. The City Central Committee shall sell stamps to branches at 40 cents.

Section 3—Special assessments may be levied by the National Convention or Central Executive Committee. No member shall be considered in good standing unless he purchases such special assessment stamps.

Section 4—Husband and wife belonging to the same branch may purchase dual stamps, which shall be sold at the same price as the regular stamps. Special assessments must be paid by both husband and wife.

Section 5—Members unable to pay dues or assessments on account of unemployment, strikes, sickness or for similar reasons shall upon application to their financial secretary be furnished with exempt stamps. Provided, that no state or district organizations shall be allowed exempt stamps in a proportion greater than ten per cent of its monthly purchases of regular stamps.

(Testimony of William F. Hynes.)
(U. S. Exhibit No. 27—continued.)

Section 6—Members who are three months in arrears in payment of their dues shall cease to be members of the Party in good standing. Members who are six months in arrears shall be stricken from the rolls. No member shall pay dues in advance for a period of more than three months.

Article XII—Headquarters

Section 1—The National Hearquarters of the Party shall be located in the city designated by the Convention.

Article XIII—Qualifications

Section 1—Members of the Central Executive Committee, Executive Secretary, Editor, and all candidates for political office, must have been (a) members of the party for two years at the time of their nomination, or (b) members of a charter organization, or members of any organization affiliating as a body within sixty days after the first convention.

Section 2—One year's membership in the Party shall be necessary to qualify for membership in the District Executive Committee; six months for city central delegates and officers, three months (in the branch) for branch officers. This section shall not apply to branch officers or city central delegates of new branches.

[Endorsed]: U. S. Ex. No. 27. Filed Dec. 8, 1939.

(Thereupon, an adjournment was taken until two o'clock p. m., this date.) [127]

Afternoon Session

WILLIAM F. HYNES,

recalled.

Direct Examination
(continued)

Mr. Mercado: Q. Mr. Hynes, are you acquainted with Albert J. Bock? A. Yes, I knew him.

Q. When did you first meet him?

A. I have known him for several years, in Los Angeles; I think, around 1922 or 1923—I met him between 1922 and 1925—and 1926—around that time; 1922, 1925 and 1926, in Los Angeles.

Q. Do you know his occupation in Los Angeles?

A. He used to be with the Dyers and Cleaners Union. I met him in the headquarters of the Communist Party on the second floor of 224 South Spring Street.

Mr. Andersen: I move that the last part of the answer be stricken out as irrelevant, incompetent and immaterial, and outside of the issues.

Mr. Hennessy: This is one of the witnesses who subscribed to the petition of Mr. Schneiderman for admission to citizenship; and who stated that Mr. Schneiderman was a man of good, moral character for a period of five years prior to that time, and that he was attached to the principles of the Constitution of the United States. We propose to show

(Testimony of William F. Hynes.)

that both of the witnesses to this petition were members of the Communist Party.

Mr. Andersen: Might I further state that, so far as this proceeding is concerned, it does not make any difference what the witnesses to the naturalization were, whether they believed him to be of good character or not? If the Court proves its case in so far as the defendant is concerned, that is sufficient; and what somebody may have thought of Mr. Schneiderman at the time is outside the issues.

Mr. Hennessy: If your Honor please, the question here is whether a fraud was perpetrated on the District Court when [128] this man obtained a certificate of citizenship, and whether or not he was attached to the principles of the Constitution of the United States. We propose to show that not only was Mr. Schneiderman not attached to the principles of the Constitution of the United States but that the witnesses who swore that he was attached to the principles of the Constitution of the United States at the time were members of the Communist organization with which Mr. Schneiderman was connected. In other words, this is all part of the chain of fraud perpetrated upon the Court at Los Angeles when he was admitted to citizenship.

The objection will be overruled. I will allow the answer to stand.

Mr. Mercado: Q. Mr. Hynes, I will show you Government's Exhibit No. 2 in evidence; and direct your attention to the affidavit of the witnesses for

(Testimony of William F. Hynes.)

the petitioner, and ask you if that refreshes your recollection as to the address of Albert J. Bock.

A. Albert J. Bock, 2420 Brooklyn Avenue—He lived in Portal Heights,—that is East Los Angeles,—and the other witness also lived over there. I recall distinctly seizing a number of documents in which both witnesses' names appeared in the minutes of the meetings of the Young Workers League.

Mr. Andersen: I move this be stricken as not responsive.

The Court: It may go out.

Mr. Mercado: Q. Do you know whether Albert J. Bock was a member of the Communist Party of the United States, or associated with the Communist Party?

A. I know he was a member of the Young Workers League, and, I believe, a member of the Workers Party. I recall that, during the 1927 convention of the American Federation of Labor, which was held in Los Angeles—and I appeared as a witness before the executive committee of the American Federation of Labor—that he was a member of the Workers Party and of the Young Workers League. At that time, I understand the executive [129] committee——

Mr. Andersen: I move that be stricken as hearsay.

The Court: What he understands may go out. State the facts, whatever they may be.

Mr. Mercado: Q. Might I ask you this question:

(Testimony of William F. Hynes.)

During what period of time do you know Mr. Block to have been a Communist?

A. I knew, from conversation with him, from 1924 or 1925; I know, from minutes I have seen—his name appeared on the minutes of the Young Workers; in addition to that, I know, from reading in the Daily Worker,—the official publication of the Workers Party and Workers Communist Party, at that time, as it was known,—that his name appeared, along with that of Minnie Karasick and William Schneiderman.

Q. I will ask you: Did you know Minnie Karasick? A. Yes, I know her.

Q. Do you know her to have been a Communist or a member of the Workers Party?

A. Yes, I know her to be a member of the Young Workers League, not from any conversation I had with her, but through documentary evidence that I seized, with her name on it, in which she made statements that she was a member of the Young Workers League.

Mr. Andersen: I move that be stricken as not being the best evidence.

The Court: Yes, the objection will have to be sustained.

Mr. Mercado: Q. Have you any personal knowledge of Minnie Karasick having been a Communist?

A. Not other than what I have stated, through information and documentary evidence.

Q. For what period was she a member of one of

(Testimony of William F. Hynes.)

these Communist organizations to which you have testified?

A. From documentary evidence, from 1925.

Mr. Andersen: I move that be stricken; documentary evidence is not the best evidence. [130]

The Court: Read the question. (Question read by the reporter)

Q. You may answer, if you know.

A. Well, from knowledge of documnetary evidence in my possession——

Mr. Andersen: (Interrupting) I object to that.

The Court: You are entitled to the documentary evidence, if it is available.

Mr. Mercado: He has some of the documentary evidence available.

The Court: He is enttiled to the documentary evidence unless you show it is not available.

Mr. Mercado: Q. I will show you a card, No. 41, and ask you if you have ever seen that before.

A. Yes, I have.

Q. I will ask you whether or not you know that that is the membership of Minnie Karasick in any Communist organization, to which you have testified?

Mr. Andersen: To which I will object on the ground that the card itself is the best evidence of its contents.

The Court: The question is: if he recognizes her signature.

Mr. Andersen: I will stipulate that it is.

(Testimony of William F. Hynes.)

The Court: Very well.

Mr. Mercado: I will offer the card in evidence, your Honor.

The Court: Q. Do you know that that is her signature?

A. I do not know whether that is her signature or not; but that was taken from Communist headquarters.

Q. When?

A. I have got a mark in the lefthand corner. It was taken from the Communist headquarters at 322 West Second Street on the 8th month, 6th day, and the 27th year.

Mr. Mercado: I will offer this in evidence.

Mr. Andersen: I object to its introduction on the ground that it is immaterial, irrelevant and incompetent.

The Court: It may be admitted and marked. The objection is overruled.

(Card marked "U. S. Exhibit No. 28.")

[131]

Mr. Mercado: Q. I will ask you if Minnie Karasick, according to your knowledge, ever went by any other name. A. Yes.

Q. What other name did she use, to your knowledge? A. Minnie Carson.

Q. I will show you a red covered document here, and ask you if you have ever seen that pamphlet before.

A. Yes; that is the membership book of the

(Testimony of William F. Hynes.)

Young Pioneers of America.

Q. I will ask you: Who were the Young Pioneers of America; what character of organization was it?

A. It was a children's organization, for the education of children between six or seven and thirteen, I think.

Q. Did it have any connection or affiliation with any Communist organization?

A. Its activities were directed by the Young Workers League or Young Communist League.

Mr. Mercado: I offer this in evidence, your Honor.

Mr. Andersen: Same objection, may it please the Court.

Mr. Mercado: The witness has identified Minnie Karasick under the name of Minnie Carson.

The Court: I will allow it.

(Document marked "U. S. Exhibit No. 29.")

Mr. Mercado: Q. In connection with Government's Exhibit No. 28,—a card bearing the name of Minnie Karasick,—I will ask you if you know the organization the People's Educational League?

A. Yes, I know of it.

Q. What character of an organization was that?

A. It was a sort of a library.

Q. Did it have any connection with the Communist organization?

A. It was operated by the Young Workers League.

(Testimony of William F. Hynes.)

Q. Have you made a study of the Communist literature which you have collected over a period of years?

A. I have made a study of Communist literature in regard to certain respects, such as the [132] unlawful character of the organizations—My studies have included——

Mr. Andersen: I move that his answer be stricken as not responsive. The question is whether he made a study.

The Court: Q. Have you made a study?

A. Yes, I have.

The Court: Proceed.

Mr. Mercado: Q. In connection with your study of this literature, have you studied the program of the Communist Party?

A. I have studied the program only in so far as it was connected with——

Mr. Andersen: I move that this be stricken as not responsive.

The Court: We had better get the answer. I don't know what it is.

The Witness: A. (Continuing) —in so far as it was connected with Communist International and other organizations that were created and sponsored by the Communist party; but more particularly I was concerned, as a law enforcement officer, with the unlawful character—the unlawful advocating of force and violence.

Mr. Andersen: I move that that be stricken as

(Testimony of William F. Hynes.)

not responsive to the question.

The Court: The question and answer may stand. The objection will be overruled.

Mr. Mercado: Q. Might I ask you: Did you investigate the practices of the Communist Party?

A. Yes; I have had considerable experience with their tactics and practices.

Q. Did you make any study of the nature of the Communist doctrines?

A. In so far as they related, as I have said, to the advocacy of force.

Q. During the period of time that you were a member of the Communist organization, did you then study the program, practices and policies of the Communist Party? A. I did.

Q. And, subsequent to that time, have you continued your studies? [133]

A. I have, over a period of years, up until the present time.

Q. And have the practices and policies been changed in any considerable degree from the period when you studied them, as a member of the Communist organization?

A. In so far as the unlawful character of the organization, I would say it has not changed.

Mr. Andersen: Might I request that that be stricken as being the conclusion and opinion of the witness? He has not been qualified as an expert in any sense. The documents introduced in evidence would be the best evidence.

(Testimony of William F. Hynes.)

The Court: "The unlawful character" may go out. He may state the facts, whatever the facts may be.

Mr. Mercado: Q. Will you please tell the Court, from your studies while a member of the Workers——

Mr. Andersen: (Interrupting) May I ask that the witness and Mr. Mercado speak a little louder?

Mr. Mercado: Q. Mr. Hynes, will you please state, from your study, what the program, practice and policy of the Communist Party of the United States is, and what the policy of the Workers Communist Party, as it was known the earlier period of time, was?

Mr. Andersen: To which I will object, on two grounds: First, that the documents introduced in evidence would be the best evidence of the policies and program of such organization; and, secondly, that this witness is not qualified, nor do I believe he can qualify, on that subject.

Mr. Hennessy: I do not know why he is not qualified as an expert. Here is a member who was a member of this Party for a period since 1922; for 17 years, he has made a study of Communistic literature, practices and policies. If he is not qualified to testify, I do not know who is. Certainly, a member of the Party should be qualified; certainly, a law enforcement officer who, during a period of 17 years, has made a study of the practices they taught, and of the literature that they have dis-

(Testimony of William F. Hynes.)

seminated, ought to [134] know. If he is not qualified and does not know, I do not know who would be qualified.

Mr. Andersen: If I may state: In the first place, this witness has never been a member of the Communist Party.

Mr. Hennessy: He testified that he was.

Mr. Andersen: If we look at his testimony in the proper light, he was simply a stool-pigeon, sent into the organization for the purpose of doing spy work. He was not a member of the Communist Party.

Mr. Hennessy: The evidence is he was.

Mr. Andersen: His name was probably on the roll.

Mr. Hennessy: He attended meetings.

Mr. Andersen: He unquestionably was very prompt in attendance at the meetings and probably attended every one that he could. I have no quarrel with that at all; but here we have a man deliberately sent into an organization—of course, not for the purpose of doing the organization any good; but, being sent into the organization for one particular purpose, namely, that he do his best to detect some form of criminality in it; in other words, he had an appetite for only one thing.

The Court: I will permit you to examine fully, in that respect, when the proper time comes.

Q. What year was it when you first joined?

A. 1922.

(Testimony of William F. Hynes.)

Mr. Andersen: Might I reserve an exception?

The Court: Objection overruled. Read the question. (Question read by the reporter) He may answer what he knows, of his own knowledge.

The Witness: A. My studies, as I testified before, were concerned mainly as to the advocating or teaching of the use of force and violence. From this study, which included reading of various official publications of the Communist Party—— [135]

Q. (Interrupting) What publications?

A. The proceedings of the Communist International; the speeches and statutes of the Communist International; the program of the Communist International; various convention proceedings; "Why Communism?"; "Elements of Political Education," published by the Daily Publishing Company in 1929, written by a man by the name of Swedliff, or something like that; and one question in particular, in that particular publication——

Mr. Andersen: Might I object on the ground that the document named by the witness would be the best evidence of the contents?

The Court: You may develop it on cross-examination. It goes to the weight of the testimony. He is testifying to what he knows of his own knowledge or where he got that knowledge. You may develop that on cross-examination.

The Witness: A. (Continuing) —This question, in this particular book, "Elements of Political Education," question number 31, propounded this

(Testimony of William F. Hynes.)

question to the reader; it says: "In what way can the proletariat free itself from the yoke of capital?" And his answer was: "Only through violence by organized political party, the Communist Party." There is a book in evidence, "Acceptance Speeches of Foster and Gitlow——"

The Court: Are those books available?

Mr. Mercado: Some of them are in evidence.

The Witness: A. (Continuing) —"A B C of Communism," "Education of the Communist," "Imperialism in the Next War," "Election Program," "Platform of Crafts Struggle," I believe, in which Foster states specifically that the Communist Party create no illusion in the minds of the workers that they can vote their way to emancipation; that the only way to do is through the overthrow by violence and force—I could name possibly 30 or 40 additional Communist documents that I have in my brief case here; if I had the time to make reference to some other documents, I could give the exact page and exact quotation in the book wherein there is outlined [136] an advocacy of force and violence on the part of the Communist Party to bring about a change in our present form of Government.

Mr. Andersen: I ask that that go out as not responsive and being merely speculative.

The Court: It may go out.

Mr. Mercado: Q. Mr. Hynes, might I ask by what means does the Communist Party teach and

(Testimony of William F. Hynes.)

advise that the workers take control of the Government of the United States?

Mr. Andersen: May it please the Court, we are getting pretty close, as I see it, to the meat of the question before the Court. For this witness, who is admittedly not an expert——

Mr. Hennessy: We do not admit he is not an expert. We claim he is an expert.

Mr. Andersen: He admittedly is not an expert. For him to make statements, when the alleged statements are precisely contained in books, according to his own statement, I think is prejudicial to the defendant.

The Court: Are the books available?

Mr. Mercado: Might I say, in explanation as to this question that we are asking this witness, this witness has gained his knowledge from several different sources; one is from reading books which are before your Honor; we have put them in evidence. We cannot put in evidence all of the thousands of documents and pamphlets that the Communist Party have put out. This man has made a study of those writings. He has attended their meetings, as a law officer, and he has got knowledge from statements that have been made; he has observed their conduct; he has had investigations under his direction and under his control; also, he has been a member of the Communist Party, and studied the Communist program, during that period of time. Now, while the statements in the books are the best

(Testimony of William F. Hynes.)

evidence as to what those books show, nevertheless, from the background of the experience of this particular witness, he is testifying [137] from all of his experience as to what the Communist Party stands for. If he uses the identical language that is in the book, it not only shows that comes from the pamphlets that have been introduced in evidence but it is testimony that has been gained from outside of the books as a result of the investigation of the Communist Party. We say that this line of questioning is very relevant.

Mr. Andersen: Might I add a little further to my previous objection, your Honor?

The Court: Proceed.

Mr. Andersen: In the first place, as I understand the witness's testimony, he was only a member of the Communist Party a very short time in 1922.

The Court: That is one piece of evidence. He says he has been studying this for 17 years. I do not know whether he has or not.

Mr. Anderson: Neither do I. In any event, at that time he was a member for only two or three months; and since that time——

Mr. Hennessy: Eight months. Why not state the testimony?

Mr. Andersen: I do not know the exact number of months; and, since that time, his investigation has simply been that of a police officer, of an organization which is suspected of criminal tenets or criminal plans, and was investigating them partly from that standpoint. Now, Mr. Mercado

(Testimony of William F. Hynes.)
admits and the witness states that all of these statements of the Communist Party are contained in their writings, contained in pamphlets and books, or whatever the case may be. If they are, the best evidence rule should certainly apply, in order that they may be construed in the light of the entire documents, and not be given the prejudicial opinion of this prejudiced witnesses. So again, I renew my objection as far as this witness is concerned that he has not been qualified as an expert. I object to all of this testimony as not being the best evidence, and that it is also his opinion and conclusion. [138]

Mr. Kenny: If your Honor please, the question in this lawsuit is whether this party, Mr. Schneiderman, advocated force and violence; that is the heart of the thing. I would not be here representing him if I thought he did. If this case be tried in an orderly fashion, the question is whether that is in the book or is not in the book. I think we should follow the best evidence rule. We have not urged a great many objections; but it does seem to me that the orderly way to try this lawsuit is now to get the exact written language and not somebody else's interpretation of what he read a long time ago.

Mr. Mercado: May I not point this out: I have no doubt what the defense in this case is going to be. I have read considerable of these books. I have read all the books in evidence and a lot more; and

(Testimony of William F. Hynes.)

what the defense definitely does not want before this Court and what they are objecting to now is any testimony as to their practices which we have ferreted out and have obtained and have put before this Court as a result of their oral transactions and as a result of their program. Pure Marxism might be considered only as philosophy; it carries with it no action. We are before this Court on the proposition as to whether this defendant was attached to the principles of the Constitution of the United States. His conduct and the conduct of the organization and belief is very pertinent to show to this Court. That has been the investigation of Mr. Hynes. The actual practice and literature that they put before the people, the pamphlets that they distributed, their method of activity, is what we believe this witness has a right to testify to, under the issues of this case. There is no best evidence rule here. These documents speak for themselves. We are now bringing before your Honor testimony gained presently by the witness.

The Court: That is not in these documents?

Mr. Mercado: That is not in these documents.

[139]

Mr. Kenny: We do not object if plaintiff wants to show evidence of practices; but we are wandering away from the question, under the best evidence rule, as to what is contained in these books.

The Court: Let us listen to the question.

(Question read by the reporter)

(Testimony of William F. Hynes.)

Mr. Hennessy: There is nothing about the best evidence rule in there.

The Court: The Court is prepared to rule. I will allow the question, if the witness knows.

The Witness: A. From what knowledge I have gained as a member in 1922 and from what further knowledge I have gained from reading various official publications, published and circulated by the Communist Party, and from observation and actual contact with the activities of the Communist Party in the form of holding demonstrations, actions by the defense section of the Communist Party, their method of bringing about a change of the form of Government is one of force and violence.

Mr. Andersen: I ask that the answer be stricken on all of the grounds heretofore urged, may it please the Court; and on the further ground that there is no showing at the time mentioned, namely, 1922, that the defendant was even a member of the organization on that date.

Mr. Hennessy: He testified that he was. In 1922, he testified, he was organizer.

The Court: Let the question and answer stand. You may go into it on cross-examination, if there is any question about it.

Mr. Andersen: May an exception be noted?

Mr. Mercado: Q. From the same basis of your knowledge to which you have just testified, can you say what type of government the Communist Party advise be established in this country?

(Testimony of William F. Hynes.)

Mr. Andersen: The same objection: not the best evidence.

The Court: If he knows, he may answer. [140]

The Witness: A. From my knowledge, while a member and again from reading the various official publications over a period of years from 1922 up to the present time, they have declared their intention to establish a Soviet form of government in the United States, or a dictatorship of the proletariat.

Mr. Mercado: Q. Did you ever find, in any of your investigations or in any of the documents that you have read on Communism, an advocacy of a representative form of government?

Mr. Andersen: I object to that question.

The Court: The objection is overruled.

The Witness: A. The doctrine of the proletariat, as I recall from a reading of the documents and as explained, is: "Stand as strong as iron and give no quarter to the enemy whatsoever." It is the rule of the working class.

Mr. Mercado: Q. Do you know what the Communist Party advocates in connection with private property? A. Yes.

Mr. Andersen: We renew our objection heretofore made to this line of questioning, regarding private property.

The Court: The objection is overruled.

The Witness: A. They advocate the abolition of private property, the seizure of the tools of production, and concentrating them in the hands of the

(Testimony of William F. Hynes.)

state, without compensation; that is in the documents in evidence.

Mr. Mercado: Q. Do you know William Schneiderman? A. Yes, I know him.

Q. Is he in the courtroom? A. Yes, sir.

Q. Will you point to him, please?

A. He is the gentleman seated to the right of the counsel table.

Mr. Mercado: Will you stipulate that he pointed to the defendant?

Mr. Andersen: Oh, yes; let the record show it.

Mr. Mercado: Q. How long have you known him?

A. I have known [141] him, by reputation, for a good many years. I have known him, in Los Angeles, possibly three or four years. I knew him in the period from 1925 up to 1926 or 1927.

Q. Do you know, of your own knowledge, whether, in that period of time, he was a member of the Communist Party or of the Workers Party?

A. Yes, I do.

Q. Do you know what organization he belonged to?

Mr. Andersen: I think I shall object to this, since that is admitted in the answer.

The Court: Unless there is some other purpose, I think that is sufficient.

Mr. Mercado: Q. Have you attended any meetings at which Mr. Schneiderman attended and spoke?

(Testimony of William F. Hynes.)

A. I do not recall specifically any meeting that I attended where he was present or where he spoke. I do have a recollection of him speaking at an open forum; but I do not recall whether I was present or not. I have a recollection of his speaking at an open forum, on Spring Street; but I do not recall whether I was present or not.

Mr. Mercado: We will take a recess for a few minutes.

(After Recess)

Mr. Kenny: Is your Honor ready to proceed?

The Court: Yes.

Mr. Kenny: I wonder if the reporter might read the last question and answer?

(Record read by the reporter)

Cross Examination

Mr. Kenny: Q. You probably were not present?

A. I do not believe I was.

Q. As a matter of fact, whenever you attended a meeting, you never let anybody speak, did you?

A. Yes, I did, except when they would call me to the platform and make some derogatory statements to me; and I would step to the platform and make a statement, and the [142] meeting would break up in a riot.

Q. It would break up in a riot?

A. Yes, sir.

Q. Did your men never use force or violence in these riots? A. Yes, sir.

Mr. Hennessy: I object to that as not proper

(Testimony of William F. Hynes.)

cross-examination.

Mr. Kenny: I think it is. The gentleman has qualified as a political expert.

Mr. Hennessy: We submit it is not cross-examination; and that you should confine yourself to the direct examination.

The Court: Read the question. (Question repeated by the reporter) What riots?

Mr. Kenny: He testified, in his previous answer, that these meetings he attended frequently broke up in a riot.

The Court: Q. Communist meetings?

A. Yes, sir.

The Court: I will allow it.

The Witness: A. Yes; whenever it was necessary to meet force with force, in a situation of that kind, I did not hesitate to use it.

Mr. Kenny: Q. Is it Captain Hynes?

A. No; it is not.

Q. What is it? A. It is "Patrolman."

Q. You are now connected with the Homicide Detail; is that right? A. Yes, sir.

Q. And that has been for how long?

A. It is 2½ months, I believe.

Q. Before that, where were you?

A. I was assigned to the West Los Angeles Detective Division.

Q. You were assigned there immediately after the recall of Mayor Shaw; isn't that right?

A. Not immediately after; no.

(Testimony of William F. Hynes.)

Q. About how far is West Los Angeles Station from the Central Station?

A. It is quite a distance; it is not out in the sticks, however.

Q. As a matter of fact, the entire squad which you commanded,— [143] the so-called "Red Squad,"—was disbanded when Mayor Shaw left office, was it not?

Mr. Hennessy: We object to that as not being proper cross-examination.

Mr. Kenny: It goes to test both the credibility of the witness and his qualifications as an expert.

Mr. Hennessy: It does not test either one: his credibility or his qualifications. It is not germane to the direct examination and has no place in the case.

The Court: Read the question.

(Question repeated by the reporter)

Mr. Hennessy: We are not concerned with that, your Honor.

Mr. Kenny: There was testimony relative to the Red Squad, on direct examination.

The Court: I will allow the question.

The Witness: A. It continued to function for some months after Mayor Bowron took office. To be exact, it was disbanded on November 30, 1938.

Mr. Kenny: Q. Mayor Bowron took office in September, didn't he?

A. Around that time.

Q. You took some leaves of absence, didn't you,

(Testimony of William F. Hynes.)

out of those 28 years that you were a police officer?

A. Yes; I think I took one leave, of 8 months, which was cancelled and then given back to me.

Q. And you accepted private employment during that time, did you?

A. Yes, I did. However, I did not take the leave of absence to accept employment at that time.

Q. The private employment was with the street railway company during the time of the street railway strike down in Los Angeles, was it not?

Mr. Hennessy: I object to that on the ground it is not proper cross-examination.

Mr. Kenny: I think the political philosophy is. [144]

The Court: That is not involved here, unless you can point out the relevancy.

Mr. Kenny: I think your Honor ought to be given the background of the man.

The Court: I will have enough to do without going afield. Confine yourself to the issues of the case.

Mr. Hennessy: There is a proper way to impeach the witness.

Mr. Kenny: It is not impeachment. It is going into the qualifications of the witness.

The Court: The Court has ruled, gentlemen. Proceed.

Mr. Kenny: Q. Now, you testified at various times to having seized books. Under what legal process did you seize the books?

(Testimony of William F. Hynes.)

Mr. Hennessy: We object to that on the ground it is immaterial, irrelevant, and not proper cross-examination. We are not concerned with that.

Mr. Kenny: The defense certainly is. It goes precisely to this man's qualifications. He has testified to his conclusions as to the methods employed by the Communist Party; and certainly it would be relevant to determine how he went about discovering those methods.

Mr. Hennessy: This man is not on trial.

The Court: I will allow it; but limit it to the issues.

Mr. Kenny: It may be in addition for the purpose of the motion to suppress.

The Court: Proceed.

The Witness: A. These books which I testified were received in various raids were seized as evidence in connection with the arrest of persons on some charge of state syndicalism; and thereby it became incumbent upon me to take such books as would assist in sustaining the charge of criminal syndicalism.

Mr. Kenny: Q. Did you get any convictions on these criminal charges? A. Yes, we did. [145]

Mr. Hennessy: I object to that on the ground it is not proper cross-examination.

The Court: I do not think so; but I think the witness has answered the question.

Mr. Hennessy: I will withdraw the objection, in view of the witness's answer.

(Testimony of William F. Hynes.)

Mr. Kenny: Q. You seized other things besides books; you seized a camera on one occasion, didn't you? A. I did not.

Mr. Hennessy: Object to that as improper cross-examination.

The Witness: A. I exposed a film in a camera.

Mr. Hennessy: I would ask the Court to *administ* the witness not to answer before I make my objection.

The Court: I will sustain the objection.

Mr. Kenny: Q. Were you ever ordered to pay a judgment in civil damages for seizing a camera in connection with one of your raids?

Mr. Hennessy: I object to that as not proper cross-examination.

The Court: What is the purpose of that testimony?

Mr. Kenny: It goes, again, to the credibility of the witness and also as to his qualifications as an expert.

Mr. Hennessy: It cannot go to either one.

The Court: The objection will be sustained.

Mr. Kenny: Q. When did your interest in political philosophy begin?

A. I have no particular interest in political philosophy.

Q. Haven't you testified that you were familiar with the doctrine of the philosophy of Marxism, Leninism and Stalinism?

A. I testified that I was familiar with what I

(Testimony of William F. Hynes.)

termed the unlawful advocacy of force and violence on the part of the Communist Party.

Q. You read these books. Was that because of your interest in the Marxism philosophy?

A. No; not particularly. I told you, as a law enforcement officer, I was interested in any unlawful activities on the part of the organization. [146]

Q. You were not trying to make an impartial analysis of what was contained in the books?

A. As to philosophy, I never attempted to make any analysis of them.

Q. You read these books and you are familiar with the various phrases used, I assume?

A. I read portions and underscored those portions which, in my opinion, I felt had to do with force and violence or overthrowing of this system of government other than by lawful means provided in the Constitution.

Q. You are familiar with the terms employed by the writers of these books?

A. Some of the terms.

Q. Will you give the Court your definition of dialectic material in them?

A. I don't know as that is used in these books at all.

Q. You never saw it?

A. I have seen it in books. I have a definition in my briefcase, as opposed to historical material.

Q. What does "dialectic" mean?

A. I do not recall, specifically. I know it has

(Testimony of William F. Hynes.)

no bearing on any unlawful force and violence.

Q. Can you tell how dialectic material is opposed to historical material?

A. I can dig up those references and give you my exact definition from the book. I have it in my briefcase.

Q. I won't bother you to do that. But you do not profess to be an expert on the philosophy or on the matters contained in those books?

A. I never have professed to be an expert on any philosophy of Marxism or any other ism. I do profess to know, to be able to read and determine, when a book says that they use force and violence.

Q. You did not read the other portions of the book to find out what relation that might have to the context? A. In some cases.

Q. Did you read, in the course of your studies, the testimony of Harold Chapman Brown, Professor of Philosophy at Stanford University, given at the Bridges' hearing on Angel Island, now in published form? A. I did not read it. [147]

Q. Or the testimony of Walter Thompson, of Stanford University, given at the same time and now published?

A. The only reference I have to that is a reference in the newspaper that they testified.

Q. Have you read this book, "The People's Friend," by Earl Browder, published by the International Publishing Company?

(Testimony of William F. Hynes.)

A. I have not read it; but I know of the existence of the book.

Q. Have you read a book published by the International Publishing Company, "Fighting for Peace," by Earl Browder?

A. It is a recent publication; I know I have not read it.

Q. Have you read any of the following pamphlets by Earl Browder: "Unity for Peace and Democracy"?

A. I think I have read a part of it.

Q. "Social and National Security"?

A. I have glanced through that book.

Q. Have you read it from cover to cover?

A. I have not read any books from cover to cover that you have mentioned.

Q. You have not read any of the books that you have testified to from cover to cover, have you?

A. Yes; I particularly read Communist literature—those portions that advocated force and violence.

Q. You read for that limited purpose?

A. That was the main purpose.

Q. You were not attempting an academic study of the problem? A. No.

Q. You were reading in order to obtain evidence for a particular purpose; is that right?

A. Yes, sir.

(Testimony of William F. Hynes.)

Q. Did you read, "The 1940 Election, How the People can Win," by Earl Browder?

A. I have perused the book. I have not read it carefully.

Q. Did you read the "Democratic Front," of Earl Browder?

A. I read through that book.

Q. Did you find anything about force and violence in there?

A. I do not recall. [148]

Q. Did you find anything about force and violence in Earl Browder's book here, "Unity for Peace and Democracy"?

A. I do not recall whether there was anything on force or not.

Q. Have you read a pamphlet entitled, "Your Questions," by William Z. Foster?

A. I have not that book. I have a copy of it.

Q. Have you read, "The Resolutions of the 10th Convention of the Communist Party"?

A. I have seen that pamphlet.

Q. You have not read it? A. No.

Q. I assume, certainly, that you have read, "The Coming Struggle With Power," by John Streachey?

A. I have not.

Q. You testified that you knew Mr. Schneiderman, didn't you? A. Yes, sir.

Q. Did you ever see him employ force and violence in any way? A. I did not.

(Testimony of William F. Hynes.)

Q. Did you ever see any behavior on his part that brought him into conflict with the laws that you were enforcing, or any law down there?

A. Not to my knowledge.

Mr. Kenny: I think that is all.

Mr. Mercado: That is all.

Mr. Hennessy: The Government rests.

Mr. Andersen: Might I respectfully suggest to the Court that we be allowed, if possible, to have the balance of the afternoon and tomorrow to prepare our case, in order that it may go on in a systematic way? I believe, your Honor, that we will save a good deal of the time of the Court if the Court were to adjourn now and let us have tomorrow to prepare our case.

Mr. Hennessy: I have no objection.

The Court: You may go on Tuesday.

(Thereupon, an adjournment was taken until Tuesday, December 12, 1939, at 10 o'clock a. m.)

[149]

Tuesday, December 12, 1939

Mr. Kenny: If your Honor please, at this time, the defendant desires to move for a nonsuit. We desire to make a brief argument; it will not take more than five minutes of the Court's time.

I am assuming that the issue presented by the Government here is, in view of the fact that no testimony was presented as to the direct advocating of force and violence by this particular defendant —that the issue is that, at the time of his naturalization, he did not adhere to the principles of the Constitution in that he did at that time admittedly belong to the Communist Party; and I take it that it is therefore the Government's contention that the Communist Party was and is a party that advocates the overthrow of the Government by force and violence. I am assuming that is the issue, because one of the latest expressions of the Court was in the Strecker case, with which your Honor is familiar, before the Fifth Circuit Court of Appeals. You recall the Circuit Court held in favor of the alien and also that the Supreme Court did; but there was a dissent. Judge Sibley of the Circuit Court dissented to the ruling. And when I take this language from the opinion of the dissenting Judge, it is not like the usual situation of a dissent; but here is what Judge Sibley, in the course of expressing a belief that the ruling should be against the alien there, said:

> "No one doubts that the economic aims of communism may be lawfully promoted by a citizen or an alien in the United States so long as they are sought to be attained by peacable means. But the advocacy of attainment by force and violence is outlawed, because laying the foundation for treason."

So, I take it that it is the expression of our courts that the economic aims of communism or any other theory with which we may not personally have sympathy, may be advocated so long as it is advocated by peaceful means.

In this case, the Government has introduced as its exhibit a [151] constitution of the Communist Party adopted in 1934, Government's Exhibit No. 5. There are several other exhibits. It is our contention—and, if you will recall, we still have pending or we reserved the motion to strike—that these other documentary matters introduced were an attempt by the Government to impeach its own evidence; in other words, your Honor, after a reading and examination of the constitution of the Communist Party it was quite clear that it was against the tenets of their constitution to advocate any kind of change through forceful or violent means. As to the documentary evidence, we say that the Government has proved the defendant's case.

Now, as to the oral evidence given: First, the witness Humphreys, who testified precisely on the central thing. Of course, there is a lot of testimony about other things; but my contention is that the central issue here is whether or not the Communist Party officially advocates the use of force and violence. Here is what Mr. Humphreys said—which, instead of proving the case for the Government, proves the defendant's case: Mr. Humphreys, on page 60 of the transcript said:

"As far as the application of force and violence was concerned, the Communist Party took the defensive, and put the first users of force upon the capitalistic government; they claimed the capitalistic government would resist the establishment of the soviet system, through force and violence, and that the working class would be justified in using force and violence to establish the soviet system of society."

In other words, it is our contention that, on the only material part of the inquiry here, the witness Humphreys testified for the defense and not for the plaintiff.

Then, the other witness before this Court was Police Office Hynes from Los Angeles; and fortunately our own Circuit Court has [152] commented on the identical type of testimony given by this very same witness in ex parte Fierstein, 41 Federal 2nd, page 53. In that case, Judge Wilbur, referring to Police Detective William F. Hynes, in charge of the radical section of the bureau, who arrested the appellant, in response to a question by appellant's attorney, testified as follows—here is the question:

"Q. Is it your view that mere membership in the Communist Party is sufficient warrant for the deportation of the alien?"

His same testimony that he gave here:

"A. I don't know if I am qualified. I was

formerly a member of the Communist Party in 1922; and I would say that the knowledge that I gained in the party at that time, and reading the various documents, books and papers issued by the Workers Communist Party of America and the Communist International, I have no doubt but what in my mind but what the Communist Party is the party which believes in, teaches and advocates the overthrow of the Government of the United States and of all organized government by force and violence."

That is identical testimony to what he gave here.

"This statement in the evidence constitutes the only testimony before the District Court, or considered by the Board of Review in the Department of Labor, as to the character of the organization to which appellant admitted he belonged. The witness is evidently testifying to a conclusion which he has drawn from reading documents, books and papers. He does not even testify that these various documents, books and papers teach or advocate the overthrow of the government of the United States; his statement was, 'I have no doubt but what in my mind but what the communist party is the party which so believes,' etc. It will be observed that the witness is testifying as to the situation in 1922, whereas the arrest in this case was made seven years later, in 1929. This

evidence is [153] insufficient to justify deportation on the ground specified in the warrant."

They take up one further point that may be of interest to your Honor; and that is:

"The appellee seems to contend that the court will take judicial notice of the character of the Communist Party. No authority is cited in support of this contention. While the character of this organization has frequently been considered by the court, and in some very recent cases, the decisions in these cases are based upon the evidence adduced before the court with reference to the character of this organization, and the statements made in the opinions of the court with reference to that organization are based upon the testimony before the court, and in no instance has the court attempted to take judicial notice of the character of this organization."

Now, as we see it, there is not only a complete failure of proof; but, on the other hand, affirmative proof of what would necessarily be the defendant's contention should Mr. Schneiderman be called upon to put on a defense in this case; and so, therefore, we renew our motion for a nonsuit at this time.

The Court: Is it your position that the opinion of Judge Wilbur is controlling in this case?

Mr. Kenny: No. I think it is illustrative and it certainly should be of persuasive force.

Mr. Hennessy: May I be heard, your Honor?

The Court: Yes.

Mr. Hennessy: Counsel, if your Honor please, is in error as to what the issues are in this case. One of the most important issues in this case is whether this alien, during the probationary period of five years prior to the granting of his citizenship, behaved as a person attached to the principles of the Constitution of [154] the United States. That is the first issue.

The second issue is whether, during that period, he was a disbeliever in organized government.

The third issue is whether, during that period, he was affiliated with an organization that disbelieved in organized government.

The rule upon a motion for a nonsuit, of course, is whether there is any substantial evidence to support the case of the plaintiff. In this case, we not only have substantial evidence but, in my opinion, we have a preponderance of evidence that can be produced in a case of this kind.

The evidence in this case is that Mr. Schneiderman, beginning in 1922, connected himself with the Young Workers League, an organization professing communistic purposes, the objective being to bring about a communistic society; that he also was a secretary of the Workers Party, subsequently known as the Workers Communist Party.

At the time he filed his declaration of intention, and at the time he filed his petition for citizenship, in Los Angeles, he was an officer not only of the Young Workers League but also of the Workers Communist Party of the United States. Subsequently, he continued his affiliation with the Communist Party, and has been the organizer in the 13th District and now is, I believe, the secretary of the Communist Party of the State of California.

We have offered, under the rules sanctioned by the Circuit Court of Appeals in United States versus Tapolcsanyi, 40 Federal, 2nd, 256, and other cases, a number of books and circulars issued by the Communist Party to show what their aims and objectives are. We have also offered in evidence testimony of members of the Communist Party as to what the aims and objectives of the Communist Party are. A reading of these books will show that the purpose of the Communist Party is to establish a communistic society not [155] only in this country but in the world.

The constitution of the Communist Party offered in evidence shows affiliation with the Third International, having its headquarters in Moscow, Russia. It is in evidence that the Communist Party of the United States contributes money to the Third International, and that the Third International exercises supervision and control over the activities of the Communist Party of the United States.

The evidence from these books—the constitution

of the Communist Party of the United States further professes a belief in the policy of Marx and Engels, Lenin and Stalin. These books show that the purpose of communism is to establish a communistic society; that they have for their objective the destruction and abolition of private property; they have as their objective the abolition of all class distinction; they have as their objective what they term the establishment of a dictatorship of the proletariat,—that is, rule by the workers; a purely class rule, totally at variance with the representative form of government that we have in the United States.

It is our contention that, in bringing about the dictatorship of the proletariat,—which is a form of state which varies with the form of state in existence in the United States,—they advocate force and violence; and we believe that a reading of the books, the reading of the statements of Lenin and Stalin, a reading even of Marx and Stalin, shows they contemplate the use of force and violence to bring this about.

Now, if Mr. Schneiderman, during the five-year period, believed in the abolition of private property, if he believed in the abolition of classes, if he believed in the creation of a dictatorship of the proletariat, the rule in this country by the workers and by the workers alone, then, of course, he did not believe in the [156] principles enunciated in the Constitution, as it stood on the 10th day of June, 1927.

when he was admitted to citizenship, and when he took his oath of allegiance to this country.

I submit that, under the rules of evidence, it is shown conclusively that the Government's case has been sustained, regardless of the testimony of Mr. Hynes.

I might direct counsel's attention to another fact: The case that he cited was a deportation case; the Tapolcsanyi case was a cancellation case. The case to which I refer happens to be a deportation case. It is reported in 58 Federal, 2nd, 621, Fourth Circuit; Fourth Circuit Court of Appeals, Berkman v. Tillinghast. Mr. Hynes was a witness in that case. He testified practically along the lines that he testified in this case; he testified that he had been connected with the intelligence bureau of the police department of Los Angeles; he had been a member of the Communist Party or the Workers Party of America; that they are the same thing, and a part of the Communist International, which aims to accomplish a revolution in the United States by force and violence; he testified to the membership of the alien in this party.

Now, this type of evidence in this Berkman case was held properly admissible. I do not see why it should not be properly admitted. It is relevant. In fact, it is one of the best types of evidence that has been received, in the Tapolcsanyi case, 40 Federal, 2nd, 256, in the Third Circuit Court of Appeals, identically the evidence, practically the same evidence.

I submit, your Honor, that the Government not only has proved the substantive case but we have proved, in my judgment, a conclusive case against the alien.

Mr. Kenny: Of course, as far as that case which counsel just cited goes, we do have a Ninth Circuit case in which they state the testimony of the witness, Mr. Hynes, as to the contents of the [157] books and documents, was a mere conclusion and was insufficient to warrant deportation.

Now, I think that we have an entirely new issue injected here that I have not run across in any case, and, if that is so, it becomes very important for your Honor to rule upon it, either now or later; and that is this issue that, even if force and violence were not advocated, if the alien believed to the contrary of the existing form of law, later on his citizenship may be cancelled. As far as force and violence, that is an issue we are prepared to meet. The other issue is a new one.

Mr. Hennessy: It is created by the complaint in this case.

Mr. Kenny: May I complete my presentation?

Mr. Hennessy: Yes.

Mr. Kenny: If that is the case, here is our position: For illustration, I took an oath, when I was admitted to practice in the Federal Court about 15 years ago, that I would support the Constitution of the United States. At that time, I was vigorously opposed to a certain amendment of the Constitu-

tion; and I belonged to an association that had for its sole purpose the ultimate peaceful overthrow of that amendment to the Constitution. Now, 15 years later, can someone come around and take away my license to practice law because I, at that time, was opposed to the Eighteenth Amendment?

Mr. Hennessy: You are a citizen; you are not an alien.

Mr. Kenny: Then we come back to Judge Sibley's statement in which he stated, in this dissenting opinion that I read to the Court, that a citizen or an alien may advocate—I have his language here; it is found at 96 Federal, 2nd; page 1021, where the opinion states:

> "No one doubts that the economic aims of Communism may be lawfully promoted by a citizen or an alien in the United States, so [158] long as they are sought to be attained by peaceable means. But the advocacy of attainment by force and violence is outlawed, because laying the foundation for treason."

Mr. Hennessy: That is a deportation case.

Mr. Kenny: That is a deportation case. I still do not see the distinction.

Mr. Hennessy: You do not? A citizen, in order to be admitted, has to be attached to the principles of the Constitution of the United States.

Mr. Kenny: Would you contend that an alien who, at the time he was naturalized, was opposed to

the Eighteenth Amendment, could have his papers now cancelled?

Mr. Hennessy: I would say "Yes." I will cite to you the case of United States versus Tapolesanyi, 40 Federal, 2nd., 255; an appeal from the District Court of the United States for the Western District of Pennsylvania; an opinion by Circuit Judge Woolley. I will read this decision; it is not very long; I think it covers the issues perfectly in this case (reading.)

In this case, Mr. Schneiderman was an alien. He had to subscribe to the Constitution as it stood on the 10th day of June, 1927, without any reservation as to other amendments that might possibly take place in the future.

Mr. Kenny: I think that case illustrates the difficulty we have in this kind of cases; in other words, here, in this case, there was a defendant who was perfectly willing to put a bullet through somebody else, and also a definite and unwarranted letter; and we can understand how any court would act upon that; but, as we have pointed out, we are not bound by that decision; it is not even in this Circuit; and I do not think your Honor is going to act. [159]

Mr. Hennessy made a very startling statement. He said, in response to my question, he believed that an alien who did not believe in the Eighteenth Amendment and thought it ought to be changed, at the time he was naturalized, is now subject to cancellation. I do not think your Honor is going to agree with Mr. Hennessy on that.

The Court: Is the matter submitted?

Mr. Hennessy: I will submit it.

Mr. Kenny: Yes.

The Court: For the purpose of the record, the motion will be denied.

WILLIAM SCHNEIDERMAN,

respondent, recalled in his own behalf; previously sworn.

Mr. Andersen: Your Honor, before we proceed with the taking of testimony, I would like to renew the motion heretofore made on which objections were reserved; or may the matter be reserved until the final submission of the case?

The Court: It may be reserved; but, if you want the Court to rule now, the Court will do it.

Mr. Andersen: I do not believe it is necessary. I think it probably would be better to reserve it until the submission of the case.

The Court: Very well.

Direct Examination

Mr. Andersen: Q. How old are you, Mr. Schneiderman? A. Thirty-four.

Q. When did you first come to Los Angeles—how old were you at that time?

A. Thirteen or fourteen years old.

Q. Thirteen or fourteen years of age?

A. Yes, sir.

(Testimony of William Schneiderman.)

Q. What schooling did you have in Los Angeles?

A. I graduated [160] from night high school and went, for about 2½ years, to the University of California at Los Angeles.

Q. Up until the time that you became 21 and just prior to the time that you became a citizen, will you briefly narrate the environment of yourself and your family,--for 10 years previous to that time?

A. My father was a garment worker; and I lived under poverty-stricken circumstances; I had to go to work as a newsboy at the age of 12, and it was during those years that I began to question certain things about existing social conditions which showed such a contrast between wealth and poverty. That, together with my studies at school in political science and history and philosophy, let me to a study of the principles of Marxism. I joined the Young Workers League when I was about 16 years old, with the idea of investigating and studying what the principles of communism had to say about the conditions of society, as I saw them. During the period in question—that is, between the age of 16 and 21, I considered that my membership and activities in the Young Workers League and in the Party were only in an attempt to investigate and study the causes and reasons behind the social and economic conditions under which I lived and as I saw them.

Q. You became a citizen practically on your 21st birthday?

(Testimony of William Schneiderman.)

A. Yes; I applied at the age of 18, and as soon as I was 21 I received citizenship.

Q. During all of the time prior to your becoming a citizen, you were going to school; or during most of the time?

A. Yes; I was also working; I was working my way through school.

Q. I want to ask you a specific question: While you were a member of the Young Workers League and the Communist Party, just what type of positions did you hold—and I refer to the letters signed by you, which are in evidence—one of them being Exhibit 20, and the other, Exhibit 21; another, 22; another, 23, another, 24; and another, [161] 25; all of which show you to be some sort of secretary. Would you explain just what type of positions you held at that time in either the Young Workers League or Young Workers Party—and, when I refer to "Young Workers League" or "Communist Party," I mean the Young Communist League and the Communist Party were predecessors in interest; in other words, for the purpose of this examination we can simply refer to the Communist Party or the Young Communist League, and that will also take in their predecessors in interest.

A. As secretary of the party, I was simply the corresponding secretary; I wrote down the minutes and sent out communications for meetings.

Q. Of course, when you were a boy and when you signed yourself as "Secretary," you were not

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secretary of the Communist Party, such as you are today? A. No.

Q. What was the difference, for instance, between your present position in the Communist Party and the type of work you did at the time you signed these letters?

A. It was not an executive position or one in which I was an executive officer,—such as being spokesman for the organization. It was more or less a clerical job, of taking minutes and writing letters. As a matter of fact, I do not think that, at the age of eighteen, I probably was fully qualified to be the spokesman of the party. I considered myself more or less a student of Marxism rather than executive officer of the party.

Q. In other words, in the former years, you considered yourself a student and you were studying the subject of Marxism or Leninism, just as you studied various other things, pursuing your studies in philosophy or sociology at the University and other places; is that correct?

A. Yes, sir. I was also educational director of the Young Workers League; but I was not an instructor of the classes that were organized. My job was to register students in the [162] classes and send out notices for meetings; in other words, to organize the educational activities of the League for which instructors were supplied; I did not instruct them, myself.

Q. In other words, you were simply doing the

(Testimony of William Schneiderman.)

necessary clerical work, in order to get the classes organized for somebody else to teach; is that it?

A. That is about it.

Q. Now, in the five years prior to 1921, as a matter of fact, over the years prior to your becoming 21 years of age and prior to the year 1927, had you ever been arrested for anything at all?

A. No.

Q. Had you ever before the Juvenile Court?

A. No.

Q. In other words, during all of that time, as far as you know, you deported yourself as a citizen of the United States should; is that correct?

A. That is correct.

Q. Was there any time during those years up until the time you were 21 years of age where you were subject to the censure of any of the law-enforcing agencies of the United States?

A. No.

Q. Now, in this case, you are accused principally of one thing, and that is that both you and the Communist Party advocate, teach or advise or teach, advocate and advise the overthrow of the Government of the United States by force and violence; and that specifically prior to the time you became a citizen you believed in those advocacies and teachings. Now, prior to the time you became a citizen, did you ever, yourself, —I mean, personally, —believe, teach or advocate any of the

(Testimony of William Schneiderman.)

things of which you are accused in the complaint on file—Just answer that "Yes" or "No."

A. No.

Q. And, so far as you know and as a result of your studies and prior to the year 1927, when you became a citizen—so far as you know, did you believe or did you know that the Communist Party advised, or its predecessors in interest, believed or advocated any of the things alleged in the complaint on file herein?

A. I did not believe that the Communist Party believed in that. [163]

Q. At the time of your citizenship—when you filed your declaration of intention, and at the time that you filed your petition for naturalization—both of those documents being in evidence and being marked, respectively, Government's Exhibits Nos. 2 and 3—did you, at that time, fully, freely and honestly answer all questions that were propounded to you by any Government officers?

A. Yes, I did.

Q. And without mental reservation of any kind?

A. Without any reservation.

Q. Now, with respect to this question of force and violence, Mr. Schneiderman, will you state to me and to the Court your views and the views of the Communist Party in relation thereto?

A. I would like to make a rather extensive statement of my views and opinions, which are also the

(Testimony of William Schneiderman.)

opinions of the state committee and the national committee of the Communist Party of the United States of America.

The Government's suit contends in effect that mere membership in the Communist Party is sufficient to deny an alien the rights and status of citizenship, or to forfeit the citizenship and rights of one who at the time of naturalization was a member of the Communist Party, on the grounds that such membership constitutes membership in an organization that advocates the overthrow of the United States Government by force and violence. No commission of an overt act has been charged against me or the Communist Party. The Government charges fraud in that I did not state my membership in the Communist Party at the time of application for naturalization and at the time of naturalization. The Government further charges that as a member of the Communist Party I was not and could not be attached to the Constitution and laws of the United States.

I deny all these charges. I deny that I or the Communist Party of which I am a member advocates or has advocated the overthrow of [164] the United States Government by force and violence. I deny that I have in any way committed fraud when I obtained naturalization. I deny that I am not or was not attached to the Constitution, Government, laws and all democratic institutions of the United States. At the time of naturalization, I

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truthfully stated that I was not an anarchist. I truthfully stated that I was not opposed to organized government and that I was not a member of an organization opposed to organized government. At the time of naturalization I did not state my membership in the Communist Party because I believed at that time, and still believe today, that it is not an organization opposed to organized government, nor is it an organization that advocates the overthrow of the United States Government by force and violence, nor is it an organization incompatible with the obligations of American citizenship. I insist that I undertook the obligations of citizenship in good faith and that prior to my naturalization and since, I have lived up to those obligations.

The Communist Party, in which I admit membership at the time of naturalization, is and was at that time a legally recognized political party, having run and still running candidates for president, governor, major, Congress and other local, state and national offices, and at this time has a place on the California ballot in accordance with the laws of the State of California. I have been a candidate for governor on the Communist Party ticket in the State of Minnesota in the year 1932, and I am now the duly elected secretary and a member of the State Central Committee of the Communist Party in accordance with the laws of the State of California which govern such political procedure.

(Testimony of William Schneiderman.)

The program, principles and practice of the Communist Party of the United States of America is officially stated in the constitution of and by-laws of the Party, adopted by the Tenth [165] National Convention of the Party in May, 1938, and subsequently ratified by a referendum vote of the Party membership. The Party's constitution is the official expression and codification of the program, principles, and practice of the Communist Party from the time of its organization to date. This is the first and only written constitution ever adopted by the Communist Party as the official expression of its program and as such ratified by its national convention and by a vote of the membership. Prior to the time of its adoption the Communist Party operated without a written constitution all through the earlier years of its existence. On numerous occasions there were drafts of constitutions submitted to conventions and offered for the study and discussion of the membership. None of these drafts were ever finally adopted by any Party convention or by the Party membership because none of these drafts were ever considered as satisfactory or as correctly reflecting the attitude of the Communist Party in America toward American conditions. Another reason that no Party constitution had ever been finally adopted prior to 1938 was that the Communist Party in its early formative years was not completely unified as to its program or interpretation of its program, and was rent by factional

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struggle within the Party which made impossible at that time the formulation and adoption of a unified program. All documents, declarations and writings during the early years when the Party was in a formative period were considered and are considered as contributions to discussion or study, or as individual interpretations of the principles of Marxism and Leninism which form the basis for the theory and practice of the Communist Party of the Unite States of America. No writing, speech, declaration or document which was or is in conflict with the basic principles enunciated in the Constitution of the Party were or are binding on the Party, its subdivisions, or its membership. I have never [166] considered as binding upon me as a member and official of the Party any doctrines which are in conflict with the principles enunciated in the Constitution of the Party. My understanding and interpretation of the program, principles and practice of the Communist Party ever since I joined the Party were and are essentially the same as those enunciated in the present constitution of the Party. I quote the following pages from the constitution of the Communist Party of the United States of America, which I consider pertinent to this case:

"Preamble

"The Communist Party of the United States of America is a working class political party carrying forward today the traditions of Jefferson, Paine, Jackson, and Lincoln, and of the

(Testimony of William Schneiderman.)

Declaration of Independence; it upholds the achievements of democracy, the right of 'life, liberty, and the pursuit of happiness,' and defends the United States Constitution against its reactionary enemies who would destroy democracy and all popular liberties; it is devoted to defense of the immediate interests of workers, farmers, and all toilers against capitalist exploitation, and to preparations of the working class for its historic mission to unite and lead the American people to extend these democratic principles to their necessary and logical conclusions:

"By establishing common ownership of the national economy, through a government of the people, by the people, and for the people; the abolition of all exploitation of man by man, nation by nation, and race by race, and thereby the abolition of class divisions in society; that is, by the establishment of socialism, according to the scientific principles enunciated by the greatest teachers of mankind, Marx, Engels, Lenin, and Stalin, embodied in the Communist International; and the free cooperation of the American people with those of other lands, striving toward a world [167] without oppression and war, a world brotherhood of man.

"To this end, the Communist Party of the United States of America establishes the basic laws of its organization in the following Constitution.

(Testimony of William Schneiderman.)

"The Pledge of Membership

"I pledge firm loyalty to the best interests of the working class and full devotion to all progressive movements of the people. I pledge to work actively for the preservation and extension of democracy and peace, for the defeat of fascism and all forms of national oppression, for equal rights to the Negro people and for the establishment of socialism. For this purpose, I solemnly pledge to remain true to the principles of the Communist Party, to maintain its unity of purpose and action, and to work to the best of my ability to fulfil its program."

"Article VI—Rights and Duties of Members.

"Section 1. The Communist Party of the U. S. A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy whereby the majority of the American people have obtained power to determine their own destiny in any degree. The Communist Party of the U. S. A., standing unqualifiedly for the right of the majority to direct the destinies of our country, will fight with all its strength against any and every effort, whether it comes from abroad or from within, to impose upon our people the arbitrary

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will of any selfish minority group or party or clique or conspiracy."

"Article X—Disciplinary Procedure.

"Section 5. Party members found to be strikebreakers, degenerates, habitual drunkards, betrayers of Party confidence, provocateurs, advocates of terrorism and violence as a method of Party [168] procedure, or members whose actions are detrimental to the Party and the working class, shall be summarily dismissed from positions of reponsibility, expelled from the Party and exposed before the general public."

"Article XI—Affiliation.

"The Communist Party of the U. S. A. is affiliated with its fraternal Communist Parties of other lands through the Communist International and participates in International Congresses, through its National Committee. Resolutions and decisions of International Congresses shall be considered and acted upon by the supreme authority of the Communist Party of the U. S. A., the National Convention, or between Conventions, by the National Committee."

Any documents, writings, or speeches in conflict with this official declaration are not and never have been binding on the Party or any of its subdivisions or its members. The Communist Party of the United

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States of America has frequently been accused, as charged in the present Government suit, with advocating force and violence, or advocating the overthrow of the United States Government by force and violence. The basis of these accusations and charges are alleged to be quotations from writings of a whole school of thought known as Marxism, Leninism, or Marxism-Leninism. The accusations and charges misinterpret and distort the position of the Communist Party and its members in two ways: first, by taking a quotation out of its context without regard to the rest of the context and without regard to the historical conditions and forces in existence at the time the quotation was written or in relation to the period about which it was written, and without regard to the country or countries about which it was written and without regard to the fact that such writings or quotations are generalized theoretical conclusions about general world affairs.

The Court: We will take a recess for a few minutes. [169]

(After Recess)

Mr. Kenny: Might I interrupt? I have the consent of my client to be absent from court this afternoon; and, if it is satisfactory and agreeable to the Court, I would like to ask that I might leave about a quarter of twelve, to be absent today and be back tomorrow.

(Testimony of William Schneiderman.)

The Court: Very well.

The Witness: A. (Continuing)

The second way in which these writings or quotations are misinterpreted in so far as the principles of the Communist Party and its members are concerned is by accepting in toto the individual interpretations of the author or writer as the official position of the Communist Party. While such writings may be and are regarded as contributions for discussion and study, as interpretations of the theory and practice of Marxism and Leninism, these writings may be and are at times in conflict with the principles and generally accepted practices of the Communist Party and its members, and these writings may distort the true position of the Party. Thus, by these means, it is possible to read into a phrase, a quotation, or even a whole book or document, interpretations contrary to the principles and practices of the Communist Party, by those who do not understand the philosophy and political theories of Marxism and Leninism and its application by the Communist Party of the United States of America.

The program, principles and tactics of the Communist Party are based on a scientific analysis of society and historical development in the past and present, and based on this analysis a perspective of society and historical development in the future in accordance with the teachings of Marx and Lenin. Marxism-Leninism is a science which embodies a whole series of economic, political, sociological,

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moral, and philosophical concepts, and a method of seeking and applying human knowledge to the needs of society. It looks upon [170] historical changes from one system of society to another as a fundamental law of the development of human society. It believes as inevitable the transition from the present capitalist mode of production and form of society to socialized production or socialism, and eventually communism. It bases this belief on historical experience, on the development of society from the early days of primitive communal life to the time when society was divided into classes, after which it went through the stages of chattel slavery, feudalism and serfdom, into capitalism and its highest stage, imperlialism. It believes the mode of production of a particular historical period, the way men make their living, determines the political forms and the ideology of that period which only reflect the economic base of that particular society, and that when the economic relations change, the political forms and ideology which are only a reflection of those relations, change accordingly. It sees society in each period divided into classes, one, the ruling class dominating over the others; the oppressed class, with the state as the instrument of the dominant class in power to assert its rule over the subjugated class. It sees a conflict in interest which inevitably results when the economic relations have ripened for the next historical stage in a transfer of power to the formerly subju-

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gated class, which sets the stage for the reorganization of society on a new and higher level such as from slavery to feudalism, from feudalism to capitalism, from capitalism to socialism. Revolution is a historical process in the evolution of society which reflects the change in the relation of forces at its most acute stage when a new class comes to power and is the inevitable result of social forces at work, and not the brain child of individuals or groups. This is the essence of what Marx and Engels called the "materialist conception of history," or historical materialism, which is a basic tenet of [171] Marxism and Leninism.

Revolution and force is looked upon by the Communist Party and its members as a historical fact, as a process inevitably rising out of the conflict of social forces and classes, when a minority representing the old order or an out-moded class subjugates a majority and does not permit any peaceful means of eliminating oppression. History is replete with such examples and this is recognized not only by Marxists but is generally accepted by many modern historians and political scientists. Such examples include the revolution of 1649 in England, the French Revolution, the American Revolution of 1776, the Civil War of 1861, and the Russian Revolution of 1917. The recognition of such historical facts and processes is therefore not limited to Communist doctrine. The Declaration of Independence upon which our own country was

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founded, and the writings and speeches of Thomas Jefferson and Abraham Lincoln defend the right of revolution and the use of force by the majority. No one has ever declared that these doctrines enunciated in the Declaration of Independence and by Jefferson and Lincoln were in conflict with the Constitution of the United States. The Bill of Rights was added to the Constitution in order to remove all doubts as to the rights of American citizens and all the people to the freedom of opinion and we Communists believe that we are fully within the rights guaranteed by the Constitution in enunciating the same general principles as Jefferson and Lincoln. We further believe that in enunciating these principles we are no more in conflict with the Constitution and laws of the United States of America than were Jefferson and Lincoln, and we deny that the enunciation of our principles constitutes the advocacy of the overthrow of the Government by force and violence or the use of force and violence.

The Communists do not desire the use of force and violence. We desire and strive for peaceful and democratic means of removing [172] exploitation and oppression. But the Communists know from a study of history that no ruling class or dominant group has ever given up its privileges or its power without resistance by legal or illegal means, and by the use of force and violence against the majority even when that majority has come into

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power by peaceful and constitutional means. The Civil War of 1861 is an example of such defiance and armed resistance on the part of the slaveholders against the constitutional majority which won the elections in 1860. The most recent example is that of the Spanish Republic, where a constitutional majority was overthrown by violent armed uprising brought about by the defeated minority, the landlords, capitalists and monarchists. After they lost the elections in February, 1936, this minority of landlords, capitalists and monarchists called on foreign armies to invade the country and assist the rebel troops to overthrow the lawfully constituted government of the Republic of Spain; after which overthrow, the new regime was immediately recognized by the United States Government. All history is replete with such examples of the use of force, both on the part of the dominant class or group in power against the people, or on the part of the people against an exploiting minority in power when peaceful democratic means have failed or were no longer open to them. Under a fascist dictatorship such as exists in Germany, for example, even the political parties that do not want to change the capitalist system of economy and have in the past under the pre-Hitler democratic republic abhorred the very word "revolution," have, since their suppression, given their support to a program of bringing about a people's revolution in Germany and the reestablishment of a democratic republic which obviously could only

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come about by the violent overthrow of the fascist dictatorship.

Marx and Engels in their day believed that under certain [173] conditions it would be possible for socialism to be established by peaceful means in democratic countries where the ruling or dominant class had not developed the same methods of repression against the majority of the people such as existed in the autocracies of the period like Prussian and Czarist Russia. More recently, the Communist Party of Spain which supported the government of the democratic republic before Franco came into power, believed that if the lawful democratic republic could survive the rebellion, under the post civil war conditions it was possible for a peaceful development to socialism. Lenin believed that at a certain stage of the development in Russia in 1917, a peaceful path to the revolution was desirable and possible. These examples are given in order to prove that Marxian principles do not automatically assume the use of force. A Marxist does contend, however, that generally the ruling class or minority group in power uses force against the majority of the people, and that all historical experience leads us to believe that they will continue to use force. Any counterforce that has been used by the majority of the people against forceful suppression by the dominant group is historically justified not only by the Communists but by the most eminent supporters of the capitalist order of society, especially

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the representatives of the new rising class who played a progressive and revolutionary role in their struggle against feudalism and the establishment of a new and higher order of society, capitalism, together with its political form, the democratic republic. Marxist and Leninist writings are replete with polemics against those who are variously referred to in different countries as reformists, social democrats or socialists, who defended the theory of the peaceful development into socialism, disregarding all historical experience that no representatives of an old order or minority group in power have ever given way peacefully to a new order or system of society representing [174] the majority of the people. Those who accuse the Communist Party of advocating the overthrow of the government by force and violence often take quotations out of the context of these polemical writings without regard to the rest of the context or to the intent of the authors to defend certain theoretical conclusions. Our theory is so interrelated that no single part can be understood apart, without its relation to the whole. They seize upon certain phrases which have become classical terms in the terminology of Marxism and Leninism, such as the "dictatorship of the proletariat," which refers to the historical role of a particular class in society at a particular stage in the transition from the capitalist system to a socialist system, or, as Lenin put it, "Not a form of government, but a state of things":

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and they read into this phrase a dictatorship of a group or party over a government or over the people.

One of the recognized authorities of Marxism-Leninism, Joseph Stalin, polemized in his speeches and writings against the conception that the dictatorship of the proletariat as a class meant the dictatorship of a party. The critics of the Communist Party program also seize upon such phrases as "overthrowing capitalist social conditions," or "existing social conditions," and read into it the meaning of overthrowing or destroying the Government, which does not and never did express a principle of Communism. By this reasoning, anyone who spoke about the abolition or destruction of poverty or unemployment could be accused of advocating the overthrow of the government by force and violence. Our critics likewise seize on the phrase, "abolition of private property," and read into it something unlawful or unconstitutional. By this reasoning, anyone who advocated public ownership as opposed to private ownership of public utilities or other public services could likewise be accused of advocating unlawful principles. The Communists do not believe in the abolition of all private property. We believe in the [175] retention of personal property for personal use, and the retention of income from work or savings; but we do advocate the social ownership of the means of production and exchange which otherwise in private hands become

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the instrument for the exploitation of the many by the few. Another misinterpretation of our principles arises from the indiscriminate manner of defining political forms of government as distinct from social and economic conditions out of which they arise, and as distinct from economic systems of society. Furthermore, those who misinterpret Marxism fail to distinguish between what we generally refer to as propaganda slogans and slogans of action, propaganda slogans being those which are used for educational and propaganda purposes to express in concise form some theoretical or political conclusion of Marxism-Leninism, and a slogan of action being one which we urge upon the people as a course of immediate action or for immediate adoption. For example, a propaganda slogan would be Lenin's phrase, "Through democracy to socialism; through socialism to the highest and most complete form of democracy." A slogan of action would be, "For higher wages, shorter hours, the right to organize, strike, and collective bargaining." And finally, an incorrect interpretation of our position arises from the false assumption that the theory and practice of Marxism and Leninism is a static dogma rather than a living philosophy and science which by its very nature changes and develops in accord with changing conditions of society, and the application of which is flexible in accordance with the particular historical period of the country to which it is applied. One of the

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fundamental tenets of Marxism and Leninism is that within its general theoretical and political conclusions its application must necessarily vary in each country in accordance with the specific national characteristics of that country and its own peculiar historical traditions and development. Revolution cannot be imported to one country from another. [176] Neither can it be imposed on any people or any country by the arbitrary will or advocacy or incitement of any group or party. The transformation of society from one stage to another has taken place in different ways in different countries within the general laws defining historical development. Its reorganization on a socialist basis will likewise have different characteristics, forms and methods within these general laws in each country in accordance with its own special characteristics. Any attempt to draw a mechanical comparison between America and other countries would be contrary to our whole method of Marxist-Leninist analysis.

That is why we reject the charge that the Communsit Party of the U. S. A. and its members are subject to orders or instructions from the Communist International, as contrary to the teachings of Marxism. Our Party constitution declares that the supreme authority in the Communist Party is its National Convention, and between conventions, its National Committee. We are affiliated with the Communist International, but we are not obliged

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to carry out decisions of the Communist International. We have never passed upon or approved either the statutes or program of the Communist International, and do not consider ourselves bound by any of its constitutional provisions or by any decisions which we do not make ourselves or approve. Our affiliation to the Communist International took place under the express provision that we are not subject to and exempt from the 21 conditions for admission to the Communist International, which it adopted in 1920 and applied to that particular period, and that we are not bound by its statutes. Since the time of our affiliation, the statutes and program of the Communist International have been modified from Congress to Congress, but we have never changed our status of affiliation, as the question of the statutes became an academic question relegated to the field of theory; and they were only of importance at the formative stage of the Communist International in 1919 and 1920, before [177] the Workers Party of America (now the Communist Party) was formed. Our Party always operated under its own rules and program, which were finally codified and adopted in written form in 1938.

The aim of the Communist Party of the United States of America and its members is to educate and organize the American people, and particularly the working class, which includes all those who labor by hand or brain, to an understanding of the nature

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of capitalist society and of the experience of history in all social, political, and class struggles of the past in order that they may better understand how to defend their own interests at present and on the basis of their learning, from their own experience, to win the majority of the people to the principles of socialism as embodied in the program and principles of the Communist Party. We deny that there is anything in our program or practice which is in conflict with the progressive democratic and revolutionary American traditions and institutions. We speak of ourselves as a working class political party because we believe that every political party represents the interests of a class or group in society, and we believe that we represent the interests of the working people who make up the majority. I quote the following from "The Democatic Front for Jobs, Security, Democracy and Peace," by Earl Browder, pages 88 to 93, which sums up in clearest form our belief that there is no contradiction between democracy and socialism:

> "We must address ourselves, however, to those friends and potential allies within the democratic camp, who in a different form entirely see a contradiction between the Communist support of the democratic program today and our aspirations for socialism tomorrow; who see in socialism itself—actual socialism, not the reactionary bogeyman—something alien to the democratic tradition of Americanism. We

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need to make clear to them, and to ourselves, the true relation between the preservation of democracy today and the [178] achievement of socialism tomorrow.

"For the avoidance of all misunderstanding, now and in the future, let us make clear beyond the slightest doubt that the Communist Party is in no way weakening or abandoning its goal of the complete realization of socialism for America at the earliest possible moment, which means as soon as socialism gains the support of the majority. Because of this fact, and not, as some seem to think, despite it or refuting it, we are the most consistent and loyal sector in the democratic front. In our loyalty to socialism lies the key to our loyalty to the democratic front.

"Our slogan, which we take directly from Lenin, is this: 'Through democracy to socialism; through socialism to the highest and complete realization of democracy.'

"Our program for socialism is organically linked up with, is a necessary outgrowth from the traditional American democracy as founded by Thomas Jefferson, whose political descendants we are. Let those who try to set off Jefferson against Marx, Engels, Lenin and Stalin, who see in socialism something 'imported from abroad,' as 'alien,' be reminded that, in the same sense, Jefferson was also 'importing' the

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theories of democracy from Europe to America, where they found their first and best realization of that period. Jefferson's greatness arose directly from his all-embracing search through the entire world of thought for the best from everywhere, from all lands. Just as America's people became strong and great because it was compounded of the most vigorous and dynamic vanguard drawn from all countries of the Old World, so American democratic philosophy and program were fed by the best thinkers of all the world, and were able to give leadership to the whole world because of that fact. We are following closely in Jefferson's footsteps, therefore, when we reject all narrow nationalism of thought and program, when we range the whole world to find the best [179] from everywhere. Like Jefferson, we believe that America is entitled to the best of everything, whatever its point of origin.

"What was the essence of Jefferson's democratic ideas, which formed the fundamental American tradition? It can be summed up in a few propositions:

"1. There can be no social health and progress in a society where the selfish private interests of a minority are imposed upon the masses of the people through governmental coercion; government must, therefore, be based upon the will of the majority, democratically expressed.

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"2. Governmental power, political power, can be built only upon a foundation of economic power, that is, ownership, control, and operation of the basic economy of the country, which is the foundation of social life; the America of the late 18th and early 19th centuries was able to achieve such a foundation by breaking up the great colonial land monopolies and opening up the great territories of the West, and by the widespread distribution of free or cheap lands. Democracy was, therefore, primarily agrarian, supplemented by the city democracy of the handicraftsmen who owned and worked with their own tools.

"3. The supreme power, the state, must be endowed with sufficient powers to perform its function to guarantee the social order which erects it from attacks by selfish minority interests within and from aggression from without, and no more. Therefore, in the democracy based upon widespread distribution of the national economy in the hands of individual producers, there must be a maximum of local self-government, and all government—a necessary evil at best—must be confined to those fields where its operations are indispensable to the solution of the problems of the people.

"We Communists unconditionally approve of the Jeffersonian principles thus expressed, and we consider that Jefferson's concrete applica-

(Testimony of William Schneiderman.)

tion of them produced the highest, most progressive society [180] that history had ever seen up to that time. We consider Jefferson's principles equally valid today, when they are adjusted to the tremendous changes that have taken place in the last hundred and fifty years.

"What are these changes? They are the changes of the economic revolution, the rise of large-scale power and machine production in industry, the disappearance of individual production, the emergence of giant trusts and monopolies, the subordination of the farm to the city, and the domination of monopoly capital over even the remnants of individual agrarian production. In Jefferson's day, the national economy was overwhelmingly in the hands of the masses of the people. Jefferson's main preoccupation was with the problem of how to keep it there. He succeeded in raising a superstructure of democratic government, and in establishing a powerful democratic tradition—but his aspiration for a self-perpetuating agrarian democracy was wrecked on the rise of machinery and mechanical power, on the industrial revolution, which he could not foresee. Today, in 1938, the national economy has passed out of the hands of the people; more than 90 per cent of it is directly owned by the great corporations representing a minute fraction of the population; the whole national economic life

(Testimony of William Schneiderman.)

is dominated by this minority—the economic royalists—subject to the limitation only of the degree of governmental intervention under the influence of the democratic masses. The economic foundations of Jefferson's democracy have disappeared; the superstructure of democratic government and the self-organization of the people this makes possible remain as the sole instruments whereby the masses can influence and control their economy. That is why democracy is threatened today by the economic royalists, by monopoly capital.

"The whole democratic mass movement arising today in America is directed toward finding some means to restore the lost economic [181] foundations of Jeffersonian democracy. If it is to remain true to Jefferson's principles, it must find a new and quite different practical program. The old individualistic economy is gone beyond recall; whereas Jefferson could bolster up democracy by the protection of individual private property in production, today all measures to strengthen private property only strengthen the hold of monopoly capital, the rich minority, over the masses of the people. The very existence of democratic self-government is threatened. There is no road leading back to the past. We are forced to abandon Jefferson's dream of an agrarian democracy, if we are to preserve Jefferson's democratic principles.

(Testimony of William Schneiderman.)

"All the progressive measures of Roosevelt's New Deal are incomplete and fragmentary efforts to apply Jefferson's democratic principles to the new conditions of the twentieth century. They are incomplete and fragmentary because they avoid their logical consequences of a fundamental collision with monopoly capital.

"The program for the democratic front which we have elaborated here is a further, and more systematic, effort to apply Jefferson's principles within the limits of the capitalist system of production and distribution.

"But a full and complete application of Jefferson's principles, the consistent application of democratic ideas to the conditions of today, will lead naturally and inevitably to the full program of the Communist Party, to the socialist reorganization of the United States, to the common ownership and operation of our economy for the benefit of all. To illustrate this, allow me to restate Jefferson's three central ideas in terms of the condition of today. We then have the following:

"1. The first, most basic, Jeffersonian proposition remains unchanged. We can repeat today. There can be no social health and progress in a society where the selfish private interests of a minority are imposed upon the masses of the people through [182] governmental coercion; government must, therefore, be based

(Testimony of William Schneiderman.)

upon the will of the majority, democratically expressed.

"2. Political power can be built only upon a foundation of economic power, the ownership, control and operation of the basic economy of the country, which is the foundation of social life; America of the twentieth century is a new world, in a deeper sense than the original America was a New World for Europe; it finds its basic and controlling economy in the form of giant enterprises, socially operated, interconnected and interdependent, which cannot be broken up without destruction of the power to produce, which can become the foundation for democratic self-government only if taken over entirely through the organs of that democratic self-government. Democracy must become, therefore, an industrial democracy primarily, a democracy of socially owned and operated industry, supplemented by the agrarian-democratic forces as allies; that is, it must be a socialist democracy.

"3. The supreme power, the state, must be endowed with sufficient powers to perform its function to guarantee the social order which erects it from attack by selfish minority interests within and from aggression from without, and no more. So far we repeat the original Jeffersonian principle unchanged. But in the conditions of twentieth century economy, which

(Testimony of William Schneiderman.)

cannot be distributed among individual producers, which must be democratically owned, controlled and operated, local self-government must be fitted into a national state with all the powers necessary to effectively operate the national economy and protect it from attack; all government—a necessary evil at best—must be directed toward creating a classless society, where exploitation of man by man has been entirely abolished, and where therefore government, the state power, will ultimately become unnecessary and will wither away and disappear. [183]

"In this restatement of Jefferson's fundamental democratic principles, we have the only possible solution for the final preservation of these principles. But at the same time we have thereby a complete amalgamation of Jefferson's teachings with those of Marx, Engels, Lenin and Stalin. We have the complete program of the Communist Party."

In a democratic republic such as ours where, within certain limits democratic rights are granted, the Communist Party and its members advocate the use of all possible democratic means to alleviate and change existing social and economic conditions, and under these constitutional guarantees has the right to actively engage in the organization and education of the people to win them for the

(Testimony of William Schneiderman.)

acceptance of the principles of the socialist reorganization of society, to eliminate exploitation of the majority by the minority, and to realize the fullest extent of democracy. We say that bourgeois democracy is limited because under capitalism and especially in its present stage, imperialism, full political freedom cannot exist because it is shackled by the lack of economic freedom for the majority of the people. There exists in our present society a formal equality and freedom, far superior to that under any previous order of society, but this formal equality merely hides the actual inequality that exists for the working people because our capitalist society is dominated and controlled by a small group or class that has in its hands the means of production and exchange and by this economic supremacy is also able to influence and control the political instruments of government, and determine the fate of the people. This formal equality which actually hides the basic inequality that arises out of the economic system was best described by Anatole France when he said:

> "The law in its majesty forbids equally the rich man and the poor man, the banker and the migrant, from sleeping under the bridge."

[184]

The present highly developed stage of capitalist society, with its concentration of the nation's wealth and resources in the hands of a few, has built up

(Testimony of William Schneiderman.)

the control of monopoly capital over the economic and political life of the country, over the instruments of propaganda and education, and over the lives and destinies of the people as a whole far beyond anything envisioned by Marx and Engels in their day, but fully bearing out their general analysis of capitalist society. The wage earner today is not in the same status as the chattel slave or the feudal serf, but he no longer has in his hands the tools and means of production which he had in the days of a simple commodity economy before the handicrafts and the artisan were replaced by the factory production of capitalism through the industrial revolution. The wage earner has to sell his labor on the market like any other commodity and he receives in return only a comparatively small portion of the value which he produces. The rest, in the main, is retained by the capitalist class in the form of rent, interest, and profit, or what the Marxists call surplus value. All of the contradictions of the capitalist system of economy arise from this basic relation leading to recurring economic crises, unemployment, wars and the other phenomena characteristic of our present day society. The class struggle arises out of the conflict of interests between the working class which generally is unable to obtain more than a bare subsistence and the economic oligarchy which has accumulated in pyramidic proportions and geometric dimensions in their hands the wealth and resources

(Testimony of William Schneiderman.)

of the nation. Thus the essence of freedom and equality which is recognized to a greater or less extent in a democratic republic under modern capitalism amounts, for the wage earner, to the right to look for a job and sell his labor power for whatever he can get, or the right to starve if he is unable to find work or is unwilling to accept work at a subsistence level or below a subsistence level. [185]

Capitalism recognizes property rights and the protection of those rights, but aside from general moralizations does not recognize and protect human rights, the right to have a job at decent standards, the right to security, the right to education. These rights, which are supposed to exist under capitalism, do not exist for the unemployed worker, for the sharecropper, for the migratory laborer. Even the political rights granted in a democracy such as ours are curtailed and at times completely suppressed. I refer to poll taxes or other forms of discrimination against the universal and equal franchise.

The Court: Q. How long will it take to conclude?

A. Without quotations, it will probably take another ten minutes.

The Court: We will take a recess now until two o'clock.

(Thereupon, an adjournment was taken until two o'clock p. m., this date.) [186]

Afternoon Session

The Court: Proceed.

WILLIAM SCHNEIDERMAN,

recalled.

Direct Examination
(continued)

The Witness: A. (Continuing) I refer to the practices in the South whereby the majority of the Negro people are disfranchised either by legal means or such means as intimidation. I refer to laws in various states and cities which are used from time to time to curtail and prohibit the rights of free speech and assemblage; and I refer to the type of legislation that is passed and used during war time or other periods of crisis in the country which suspend or abrogate many of the constitutional rights of citizens. The average citizen who is a wage earner does not receive the same latitude in his ignoring or violation of the law as is enjoyed by the big corporations who violate it at will, often without punishment. There are corporations and employers who have been systematically violating such laws as the Wagner Labor Act and the Wages and Hours Law with impunity for months or years, and where they are unable to get away with direct violation, they are able to find ways of procrastination, evasion, or legal loopholes, by which they can violate the spirit if not the letter of the law. Even the mildest efforts at reforming some of the most evil practices of big capital, such as the efforts

(Testimony of William Schneiderman.)

undertaken in recent years by President Roosevelt and his administration, have met with the bitterest opposition of these economic groups and some of the most outspoken of their representatives have even incited to civil disobedience and disorder and have issued more or less veiled threats that if they cannot have their way under the present political forms, they will work for the establishment of fascism in the country. All of these factors lead us to the conclusion that even the most well-meaning and liberal administrations are but instruments of the dominant economic [187] class, that the state is the instrument of the ruling class in power, and that essentially because of its economic basis there exists a more or less veiled dictatorship of monopoly capital over the lives of the people. In our conception democracy can only be fully realized when the economic basis for inequality no longer exists, and that is in a society where the means of production and distribution are socially owned by the people, and where the economy is not based on an anarchistic unplanned method of production for the market for profits, but where production is planned for use and enjoyment of the whole people. Such an economic base in a socialist society where all class divisions will disappear will also bring with it greater political democracy in that democratic processes will not be hampered and curtailed by a minority class, but will develop and flourish in the interests of all the people. When we speak

(Testimony of William Schneiderman.)

of the dictatorship of the proletariat, we do not refer to a dictatorship in the generally accepted sense of the word, but rather that the majority of the people shall really direct their own destinies and use the instrument of the state for these truly democratic ends. This can only be achieved when the majority of the people choose to follow the socialist path by democratic processes.

It would be reducing Marxism to a vulgar absurdity to say or believe or advocate that a social revolution could be brought about by any single group or party by a conspiracy or by in any way imposing the arbitrary will of any minority group or party upon a people or a government. The writings and declarations of Marxists and Leninists are replete with statements rejecting any such ideas. The Communist Party of the United States of America strives to identify its activities with the desires and wishes and aspirations of the American people and submerges its own interests to the general interests of the people. It strives to submerge its own [188] interests to the interests of the nation which it identifies with the interests of the majority of the American people. The Communist Party and its members are obligated to defend our country and its democratic institutions against any enemy from within or without, from at home or abroad.

We therefore believe that our program, principles, and tactics, our theory and practice, are perfectly consistent with the obligations and rights of American citizenship.

(Testimony of William Schneiderman.)

That is the general introductory statement, stating our views.

I would like to introduce some quotations from various authorities which I believe bear out the main argument that I have presented in this statement.

Mr. Hennessy: I have no objection to the introduction of these, provided Mr. Schneiderman will identify them and give us the date when they were issued.

Mr. Andersen: For your information, Mr. Hennessy, the books from which the excerpts are culled will be introduced in evidence and you will be supplied with a copy of those excerpts.

Mr. Hennessy: We appreciate that; but, if Mr. Schneiderman has them available, I would like to have him state all the books from which they are taken, the author and the date of the books, and also whether or not they were circulated by the Communist Party.

Mr. Andersen: Q. Will you conform to the suggestion of Mr. Hennessy, Mr. Schneiderman?

A. Yes. I have referred in my statement first to the fact that Abraham Lincoln, in his writings and his speeches, defended the right of revolution. I want to quote here from a speech made in the United States House of Representatives, January 12, 1848, by Abraham Lincoln, which was taken from the "Complete Works of Abraham Lincoln—Gettysburg Edition," Volume I, pages 338 and 339: [189]

(Testimony of William Schneiderman.)

> "Any people anywhere being inclined and having the power have the right to rise and shake off the existing government, and form a new one that suits them better. This is a most valuable, a most sacred right—a right which we hope and believe is to liberate the world. Nor is this right confined to cases in which the whole people of an existing government may choose to exercise it. Any portion of such people that can may revolutionize, and make their own of so much of the territory as they inhabit. More than this, a majority of any portion of such people may revolutionize, putting down a minority, intermingled with or near about them, who may oppose this movement. Such minority was precisely the case of the Tories of our own revolution. It is a quality of revolution not to go by old lines or old laws, but to break up both and make up new ones."

The same "Complete Works of Abraham Lincoln," from the Second Inaugural Address, I quote:

> "This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it." [190]

I also want to quote Lincoln, as indicating that the Marxism principle, regarding labor and capi-

(Testimony of William Schneiderman.)

tal, is a principle which was recognized also by American political leaders; for example this quotations from Abraham Lincoln, taken from "Complete Works of Abraham Lincoln—Gettysburg Edition," Volume X, page 51, in a speech to the United States House of Representatives, in which he made a reply to a committee from Workingmen's Association of New York, March 21, 1864:

> "Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital, and deserves much the higher consideration."

That is from a message to Congress, December 3, 1861.

I also want to refer to the writings of one who is not in any sense of the word a Communist or a sympathizer with Communism; but these writings, I believe, bear out the contention that I made that many of the recognized historical principles which we advocate are recognized by people who study and discuss philosophy, or, rather, politics and history. This is a quotation from Mr. Maury Maverick, formerly Congressman and at present Mayor of San Antonio, Texas, from his book, "In Blood And Ink," published by the Modern Age Books, Inc., New York:

> "Democracy, to me, is liberty plus economic security. To put it in plain language, we Amer-

(Testimony of William Schneiderman.)

icans want to talk, pray, think as we please—and eat regular. I say this because there is a lot of nonsense in talk about liberty. I have said before that abstract liberty is meaningless. You cannot fill the baby's bottle with liberty." Page 143.

"The principal thing is for all Americans to find a way to hang on to what our forefathers called liberty. Conservative or radical, you have the right to any opinion you like—that's inherent in Americanism." Page 5. [191]

"It is this free opinion that I hope and you hope will be preserved. If we are sensible Americans, we must agree upon our right to disagree. We must, too, open our eyes to history in order that we may see the future and prepare for it." Page 6.

"Benjamin Franklin and other eighteenth-century American writers used the words constitution and government interchangeably and synonymously. But they always implied that there was something else besides a written constitution—a spirit of constitution which came from the people's way of life." Page 14.

"In all ages government has acted in the last analysis as the agent or instrument of economic power—of those who owned the land. It is idle to talk of human rights as separate from economic rights. Throughout history idealists have fought—with arms and with ballots—

(Testimony of William Schneiderman.)

for human rights. But the people have won and retained their rights—their civil liberties —only when they have won some measure of economic power, and consequently some voice in their governments." Page 92.

"Every Marxist has been taught that this ruthless concentration of wealth and centralization of economic power will be the destruction of private capitalism. When monopoly and the concentration of wealth becomes intolerable, they say, socialization of wealth—of the concentrated means of production, that is —becomes the only solution." Page 175.

"Throughout history the property interests —whether the great Roman landowner, Chinese landowner or the French landowner; whether the Southern slaveowner, or the modern factory owner--have always resisted the attempts of the people to improve their conditions—to secure a greater interest in the land." Page 191.

"We can't refuse the social challenge of monopoly domination—not unless we are ready to surrender the living standard and the liberties we now have. So let's have at the monopolies, and tell [192] them we either take them over, or control them—whichever we, not they, decide is best." Page 193.

I now want to quote from a document which is the preface to a book by John Strachey, "The Coming Struggle For Power."

(Testimony of William Schneiderman.)

Mr. Andersen: I offer that book in evidence as Defendant's Exhibit "B."

(Book marked

"DEFENDANT'S EXHIBIT B.")

The Witness: A. This author is not a member of the Communist Party; but I am introducing his opinion because he is a recognized authority on Marxism and general communistic theories; has written many books on the subject and has lectured on the subject in the United States. This preface deals with the question of force and violence, for which he was arrested and an attempt was made to deport him on the ground that he advocated the overthrow of the Government by force and violence:

> "On March 13th, 1935, in a suburb of Chicago, Illinois, I was arrested by two officers of the Federal Government of the United States. The charge was that I had advocated the overthrow of the United States Government 'by force and violence.'
>
> "Since no statement of mine advocating such action could be produced, the Federal authorities relied upon numerous passages in my books and articles in which I had described myself as a communist. For, they argued, syllogistically, all communists advocate the use of force and violence. Strachey is a communist. There-

[Note: All italics in this exhibit are by the author.]

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

fore Strachey advocates the use of force and violence. This reasoning on the part of the Federal authorities served to raise a question which, I believe, agitates the mind and conscience of almost every man and woman who is concerned with the present condition of the world.

"Do the communists advocate that the establishment of a new social system shall be accomplished by violent means? This question concerns especially those people who are today convinced that much [193] at any rate of the communist case against capitalism is true, and who, therefore, feel that some change in the basic organization of society is necessary. Such people often feel, however, that they can give no support to the communists if this often-repeated charge of favouring violence is justified.

"But the communists do not advocate or desire the use of force and violence.

"This assertion may well seem incredible to those who are alone familiar with communist views as these views are described by the communists' most bitter opponents. We have all read a thousand times in the capitalist press that the communists favour violence, that this is the chief difference between them and the Socialists, that the communists openly 'preach revolution.'

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

"None the less, I repeat, the communists do not, nor ever will, advocate or desire the use of force and violence.

"It seems, then, that the communists have very different views on this question to those usually ascribed to them. In order to define precisely the communist position on the question of force and violence it will be necessary to raise three issues. First, we must enquire whether it is possible for us to live peacefully under our present social order. Second, we must define the difference between *predicting* that violence unfortunately will occur at certain junctures in human history, and *favouring* or *desiring* the occurrence of such violence. Third, we must deal with the question of whether or not there exists in Britain and America democratic machinery capable of effecting basic social changes by peaceful and constitutional means.

"In the first place, then, what are the presuppositions of those who accuse the communists of advocating violence? The assumption which is always made, though usually tacitly, is that we live today in a kind of Eden of peaceful cooperation and social harmony. [194] The one feature, it is implied, which mars the otherwise idyllic scene is the existence of certain criminal lunatics, labelled 'the communists' who, for some totally inexplicable reason, are

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

bent on turning an existing Arcadia into a scene of destruction, carnage and rapine.

"Now if this assumption were true, who would not condemn such destructive fanatics. If it were true that we could, we would, live in peace and plenty under capitalism, then, beyond a doubt, almost everybody would be ready to reprobate those who seemed likely to disturb us.

"But does this assumption of an existing system of social and economic harmony bear any resemblance to the reality of the present world? To ask such a question is unfortunately to answer it. The world of our epoch is racked by extraordinary, intense and ever recurrent outbreaks of violence, both within and between every capitalist state. No capitalist community is free from social conflicts within itself, from strikes, lockouts, and demonstrations of the unemployed and the underfed. And all these events involve varying degrees of violence, frequently including the loss of life. Dwarfing, however, even these recurrent outbreaks of social violence, the shadow of a new outbreak of the incomparable violence of general war advances upon us. This veritable inferno of existing or impending violence (and no Eden) is the social scene upon which the communists appear. If, then, the communists were so mad as to 'advo-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

cate violence' they would be undertaking an altogether redundant task. The presuppositions of the accusation against the communists are totally misleading. For that accusation to have weight it must be *possible* for us to live in peace under capitalism. And this is precisely what is impossible.

"Shall we, however, be told that the existing violence of our world is merely the result of the baleful activities of the [195] communists themselves, that if only the communists were imprisoned or exterminated life under capitalism would become an idyll? Even in regard to the violence of industrial disputes such a contention is manifestly absurd to everyone who knows anything of modern industrial life. (This allegation of communist responsibility for every industrial dispute is made by the same people who, on other occasions, never tire of telling us of the insignificance, incompetence and impotence of the communists.) But it is impossible even to suggest that the communists are responsible for the far greater violence of past, present and future capitalist wars. Hence there is no doubt that whatever the communists are *preaching*, other people are here and now *practising* a constant use of violent methods for attaining their ends.

"What then, must be our surprise when we discover that the people who are, demonstrably,

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

responsible for the extreme violence of our times, are the very people who so loudly arraign the communists as disturbers of the peace? For, after all, so long as capitalism exists, the capitalists and their spokesmen must bear the full responsibility for both the social and the international violence which their system visibly involves. They are quick enough, in all conscience, to claim credit for the achievements of the system. They must carry the burden of its liabilities also. They have the power; they have created the world in their own image. They cannot escape responsibility for what it is like.

"These censors of the communists are, then, the very men who are leading our whole civilization straight upon its destruction in a new world war. They are the capitalist statesmen, who turn aside for a moment from the pressing business of drilling their police or building their tanks, their battleships and their bombers, to raise pious hands in holy horror at the wickedness of the communists who (they say) 'advocate violence.'

"In the hearing before the District Director of Immigration [196] which followed my arrest and which, apparently, resulted in the proceedings against me being dropped, I was asked to summarize my position——"

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

The Court: Q. What date is this?

Mr. Andersen: It is part of the same quotation.

The Witness: A. The date of his arrest was March 13, 1935.

Mr. Hennessy: This is dated July, 1935.

The Witness: A. (Continuing)

"I replied as follows:

"'I do not believe in or favor force or violence. What is true is that I cannot conceal from myself the fact that force and violence have been used and are now being used by the capitalist class all over the world. I believe that this use of force and violence has happened and I admit that I believe it may happen again, but that does not mean that I am in favor of it happening again or that I advocate it in any conceivable way.

"'On the contrary, I believe that the undeniable fact that an ever-growing use of force and violence hangs over the world today as a nightmare to me and to all decent people. As we sit at this hearing today the continent of Europe is on the bring of an outbreak of force and violence between the capitalist governments of that continent. First Europe and then the whole world is, in the opinion of every expert adviser, about to be plunged, if not this year, then in some future year, into the inferno of international capitalist war; and I cannot conceal from you, Mr. Inspector, that I consider

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

that for any capitalist government today to accuse me of advocating force and violence is an insolent presumption.'

"So far I have sought to demonstrate two simple propositions. First, that the spokesmen of the capitalists paint a preposterously misleading picture of the world when they accuse the communists of disturbing a peaceful and harmonious scene with the advocacy of violence. Second, that the very men who make this accusation are [197] themselves engaged, not indeed in the advocacy of violence, but in its ceaseless practice.

"These facts discredit the particular persons who habitually accuse the communists of advocating violence. But they do not necessarily disprove that accusation itself. It may be that the capitalists have no shred of right to make the accusation; yet the accusation itself may be true. But every responsible communist repudiates the truth of the accusation itself. What in fact then is the nature of communist doctrine on the difficult question of force and violence?

The communist is, and always must be, the champion of civilisation against all and every form of barbarism. He actively works for the banishment of all forms of force and violence from human affairs. He must desire, above everything, the establishment of a form of so-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

ciety in which social and international peace becomes, for the first time, possible. But he knows that such a harmonious society is not possible till the factories, the fields, and the mines, have been taken out of the ownership of a numerically small class and made the common heritage of man. Hence, in working for the abolition of capitalism, he is convinced that he is attempting to achieve the one thing which can make peace possible.

"But, we may be asked, if this is so, why do not the communists abjure, utterly and immediately, the use of force and violence? If it is true that a peaceful society is their aim, why do not they set an example of absolute pacifism, quietism and non-resistance now? This sleek, ingenious objection comes readily enough to the lips of the better-informed apologists of capitalism. And, in truth, nothing more convenient to the capitalists can be imagined than that their opponents should take up such a position. 'How delightful it would be,' the capitalist statesmen wistfully reflect, 'if only everyone who cannot agree with us would accept the principles of non-resistance. [198] Then, we should be assured that whatever we did, we should never encounter any inconvenient opposition.'

"As long ago as 1884, Frederick Engels, one of two co-founders of the modern communist

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

movement, answered them in a letter to August Bebel, a leader of the German working class. The passage is worth quoting, not only in order to show that the communist position on the question of force and violence has always been the same, but also because Engels reminds the capitalists of something which they now often forget: namely, that they too have been in their time great makers of revolutions; that capitalism has not been in existence for ever, but was on the contrary established everywhere by the violent overthrow of feudalism, the social system which preceded it.

"Engels speaks of Europe, but his words apply even more directly to the United States, which have an avowed and explicitly revolutionary origin.

" 'Throughout the whole of Europe the existing political situation is the product of revolutions. The legal basis, historical right, legitimacy, have been everywhere riddled through and through a thousand times or entirely overthrown. But it is in the nature of all parties or classes which have come to power through revolution, to demand that the new basis of right created by the revolution should also be unconditionally recognized and regarded as holy. The right to revolution *did* exist—otherwise the present rulers would not be rightful —but from now onwards it is to exist no more.'

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

"What, Engels continues, is the position of those German political parties which will only allow the German worker's party political rights on condition that it renounces all thought of armed resistance in any circumstances?

"'What is the position of the parties?' Engels writes. [199]

"'In November 1848 the Conservative party broke through the new legal basis created in March 1848 without a tremor. In any case it only recognises the constitutional position as a provisional one and would hail any feudal-absolute coup d'etat with delight.

"'The Liberal parties of all shades cooperated in the revolution of 1848-1866, nor would they deny themselves the right today to counter any forcible overthrow of the constitution by force.

"'The Centre recognises the church as the highest power, above the state, a power which might in a given case, therefore, make revolution *a duty*.

"'All these are the parties which demand from us that *we, we alone of them all,* should declare that in no circumstances will be resort to force and that we will submit to every oppression, to every act of violence not only as soon as it is merely formally legal, legal according to the judgment of our adversaries—but also when it is directly illegal. Indeed no

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

party has renounced the right to armed resistance, *in certain circumstances,* without lying. None has ever been able to relinquish this ultimate right.'

"The reader of this introduction who is unfamiliar with communist thought will, I fancy, be feeling a growing sense of bewilderment.

"'If all this is what the communists really think, and believe', he will be saying, 'why do they often talk about revolution, and, if I am not mistaken, about the necessity of revolution?'

"These questions of the nature of revolutions and of the likelihood, or inevitability, of their future occurrence, figured prominently in one stage of the dialogue between U. S. Inspector of Immigration (Mr. Zucker) and myself in Chicago. The Inspector read out a passage from this book, to be found on page 359 of this new edition.

"Inspector: 'I read into the record the following excerpt found on pages 357 and 358:

[200]

"The coming of communism can alone render our problems soluble. A working-class dictatorship can alone open the way to communism. A working-class dictatorship can only be successful if the workers as a whole achieve a clear understanding of the historic destiny of their class. And this understanding, in turn, cannot be developed unless the working class succeeds

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

in organising its most conscious and clear-sighted members into that indispensable instrument of the workers' will, a Communist party. The assumption of power by the workers can occur by means of a revolution alone; by means, that is, of an event which takes place over a limited number of years, and of which there may be a critical moment such as the conquest of the existing state apparatus in a capital city which can be 'dated' to a given week of a given month of a given year. The coming of communism itself, however, after the achievement of working-class power, must be a gradual process. And it is only gradually, with the emergence of communism, with the creation—and that, we may be sure, only by Herculean labors and painful sacrifices—of the essential economic basis for a classless society, that the problems which today threaten civilisation with eclipse will actually be solved."

"Inspector: 'Have you anything to say?'

"Strachey: 'Yes, I would call your attention to the fact that once again I am expressing my view, for what it is worth, of the way in which social and political events take place, whether we like it or not. * * * Then, I think that I had better explain what the word "revolution" means in the passage cited, as this is not clear without the context. The word "revolution" means the transference of political

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

power from one social class to another. Now there have been instances in history in which such a transference of power has taken place without any violence occurring. Such revolutions have been called peaceful revolutions and the leading historical example is the transference of power from the British [201] aristocracy to the British middle or capitalist class by the "Reform Bill" of 1832.

" 'I further call your attention to the fact that on line 3 of page 358 I state that there may be a critical moment in such revolutions "such as the conquest of the existing State apparatus in a capital city." I do not see how any student of history, whatever his views, could deny that there may, unfortunately, be such moments in the future just as there have been in the past, but this does not mean that he wishes or advocates that such critical moments should occur.

" 'If I might use a simile I might say that when sitting on the seashore, I might take the view that the tide would come up and wet my clothes but this would not mean that I should favor or advocate the coming up of the tide.'

"I believe that this difference between *predicting* that the abolition of the capitalist system will involve violence, and *advocating* or *desiring* such violence, is a distinction of primary importance. For no one could deny that

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

communists do predict that violence will take place. But such prediction does not mean that they have ever dreamt of advocating or desiring violence. The best demonstration of this vital point was made by R. Palme Dutt in his periodical the 'Labour Monthly' in 1926.

"Dutt is the leading communist thinker of the English-speaking world and is a responsible member of the Communist International. Hence his words will serve to shew that the repudiation of the accusation of favouring force and violence was not the suddenly evolved casuistry of a communist author under arrest, but is the consistent attitude of all communist spokesmen. Dutt is answering the familiar accusation of favouring force and violence which Mr. James Ramsay MacDonald (at that time the leader of the British Labour Party, but now Lord President of the Council in the British National Government) had just preferred against the communists with [202] particular venom.

"Dutt wrote: 'It is a lie to say that the revolutionaries advocate violence and civil war. What the revolutionaries say is that the issue of bourgeois violence confronts the working class and has got to be faced, and that the workers cannot afford to put their trust in the capitalist law and the capitalist state machine for their protection. And events are daily proving the truth of this.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

"'Imagine a parallel. Suppose a scientist to declare, as a result of his investigations, that an earthquake will take place in England within ten years, and that all houses, unless reinforced in a certain way, will be shattered. It is reasonable to doubt his conclusion, to discuss his evidence, to examine the facts and see how far they bear him out. But the MacDonald method is different. Mr. MacDonald would say: "Infamous scientist! He is in favour of earthquakes. He wants to shatter all our houses. Out with him! Earthquakes are all very well for countries like Japan; but we do not want them here. We like to live at peace. We have always lived at peace. Expel this scientist! Vote for me and no earthquakes!" And amid general applause, by an overwhelming majority, a resolution would be carried denouncing the scientist and denouncing all earthquakes. . . . Neither the communists, nor any other section of the working-class movement, desire or advocate violence or civil war in any form. Communism stands for the abolition of every form of coercion and every form of violence. Compared with communism, the Quaker opposition to violence is half-hearted and insincere, for the Quakers rest on capitalism and the capitalist apparatus, draw their wealth from it, are mixed up with their financial investments and shares in the whole of imperialism and its daily

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

violent subjection and coercion of the majority of the human race. Communism alone proceeds along the correct method [203] to remove coercion by removing the causes of coercion. But this process involves struggle in the existing world of struggle; and communism teaches that, so long as the working class submits to bourgeois violence, so long they not only do not escape struggle but, by the continuance and expansion of capitalism and imperialism, the sum-total of violence in the world is increased.'

"Many readers, and in particular those who desire fundamental social change, but who believe that such change will come about gradually and peacefully, will, no doubt, still be feeling dissatisfied with our presentation of the problem. They may maintain that the whole issue has been misstated.

" 'There is really no question,' they may say, 'of any passive submission to the will of the capitalists. It is demanded of the communists that they should pledge themselves in all circumstances not to use violence. But this will not leave them helpless. On the contrary there exists in Britain and America a well-developed democratic, constitutional procedure by which social changes, no matter how far-reaching, can be effected. The communists have only to convince the majority of the electorate that their case is sound for them to be able forthwith to

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

use the existing state machinery, first for gaining valuable concessions for the working class and ultimately for the expropriation of the capitalists and the organisation of production for use on a socialist basis, and none will say them nay.'

"The communist answer to this assertion is, quite simply, that neither part of it is true. It is not true that there exists today in England and America democratic, constitutional machinery, which can be used for the abolition of capitalism and the organisation of socialism. It is not even true that our existing democratic machinery can be used to win significant reforms without it being first paralysed and then abolished altogether by the capitalists.

[204]

"We are not here concerned with the preposterous disadvantages under which the workers of a capitalist community must suffer if they seek to use the existing democratic machinery for their purposes. I am taking no account of the fact that the wealth of the capitalists gives them a 99.0% monopoly of all our modern and perfected means of influencing and confusing men's minds that the press, the radio and the cinema are just as much the private property of the capitalists as are the coal mines or the steel mills; that the schools and, to a very great extent, the pulpits, too, can be,

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

and are used to prevent men from becoming conscious of the possibility of any alternative to capitalism; that democratic electoral machinery responds only when it is approached with hard cash in hand. For it is true that all these enormous difficulties can be, and have been, in some measure overcome by working class political parties, operating in capitalist democracies. The sheer, intolerable pressure of capitalism upon the workers is so great that working class political parties of an ostensibly anti-capitalist nature have struggled into existence almost everywhere. And they have in some countries, such as Germany, for example, won sufficient votes to attempt to use the existing machinery of the state to win concessions, and to look forward to using it for the abolition of capitalism itself.

"Now, whenever and wherever this situation has developed to a point at which its power has begun to be called into question, the capitalist class has immediately scrapped the democratic and constitutional system and has resorted to rule by what we have come to know as the method of fascist dictatorship.

"This point emerged towards the end of my examination in Chicago. The following passage from a book of mine, called 'The Menace of Fascism' was read: [205]

"'Indeed the conditions of political life in a modern capitalist democracy may well be compared to a game of cards. The capitalists

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

sit playing against the workers. For a number of years the game goes on in a perfectly orderly way. Neither side shows any signs of trying to tamper with the rules (to alter, that is, the framework of the Constitution.) And then it becomes apparent that the stakes of the game have gradually been raised until all that either side possesses is now at hazard. (The economic crisis, that is, has grown worse and worse until the inescapable issue has emerged: either slow starvation and ruin for the workers, or the taking of the means of production from the capitalists.)

" 'Moreover, when this point is reached, another fact also becomes apparent. It becomes apparent that under the existing rules of the game, the workers would, sooner or later (and in spite of all the advantages of the capitalists) —the workers by sheer, overwhelming weight of numbers would, if the democratic system were preserved, acquire a parliamentary majority. Will the capitalists, in these circumstances, scrupulously preserve the rules of the game and meekly hand over their whole property as the forfeit? To ask such a question is surely to answer it. Of course they will cheat; of course they will tear every constitution in the world to shreds rather than allow their property and

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

privileges to be taken from them. Who wouldn't?'

"'Q. Mr. Strachey, do you have any comment to make on that passage?

"'A. Yes, this passage does, I think state as clearly as I have been able to state it anywhere, my view of what is only too likely to happen. I call the Inspector's attention to the fact that it is once more merely a statement of what it seems to me is likely to happen, but it does put my view, which has grown in my mind as a result of my experience in European politics, that it is the capitalists who resort to force and violence, if and when they [206] 'see their position encroached upon by the workers' use of the democratic and constitutional methods of political change.'

"I do not see how anyone reflecting upon the history of Europe since the War can possibly deny that everywhere and always the capitalists have unhesitatingly resorted to violence just as soon as they felt their position encroached upon in any way.

"The communists had persistently predicted that this would be so. They had persistently warned the working class that if they relied upon the capitalists paying the forfeit, if they lost the democratic game, they were deluding themselves most tragically and would find themselves suddenly face to face with an outbreak

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

of capitalist violence and terror with which they would be quite unprepared to deal. The communists, undoubtedly made themselves unpopular by repeating this truth: Those labor leaders who preferred to tell the workers that there was no danger of the capitalists ever breaking the Constitution, that there was no need for the workers to prepare for civil conflict, were able, by this pleasing message, to win great popularity.

"Indeed those leaders have in many countries retained their positions at the head of the working class movement, right up to the moment at which they have been engulfed by that wave of capitalist violence which they had declared to be inconceivable. These labour leaders have not hesitated to join with the capitalist propagandists in twisting the meaning of the communists' warning to the workers to prepare for the use of relentless violence against them, into an advocacy of the use of violence, or even into a criminal appeal for violence for its own sake. The leaders of the British Labour Party in particular make great play with Lenin's well-known warning of heavy civil war in England. R. Palme Dutt, in an article from which we have already quoted, answered them as follows:

[207]

" 'Lenin spoke of heavy civil war in England. But when that quotation is given, it is never

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

given in full. Lenin did not say, "Let us make civil war in England." Lenin did not say, "Hurrah for Civil war in England." Indeed on another occasion, Lenin declared, as Marx had declared before him, that if the revolution could be carried through peacefully in England, then speed the work. But what Lenin did say was that he was convinced that the revolution could not be carried through peacefully in England. And for this statement he gave sober, matter of fact evidence and reasons, which have to be gainsaid before the conclusion can be gainsaid. What Lenin did say was that the English workers must "Prepare for," *prepare for*, not seek for, aim at, hope for—*prepare for* the necessity of winning their freedom, not through "easy parliamentary victories" but through "heavy civil war." That was a sober estimate of the future by the greatest working class strategist in history. It was a scientific statement, backed by evidence, representing the outcome of his life's work, study, thinking, and experience of the working of social forces.'

"Lenin wrote of England. He judged that the British capitalists were sufficiently tough, tenacious and relentless to fight by any and every means to retain their power and privileges. Some Americans may feel, perhaps, that the American capitalists are different; that they are mild, democratically minded men who

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

would certainly obey the dictates of popular assemblies even to the point of dispossessing themselves of all their wealth. The American Communist Party, on the contrary, takes the view that the American capitalists have shewn themselves to be fierce, arbitrary and relentless fighters for their class interests. The American communists believe that there is no possibility of the American capitalists allowing the transition from one social system to the other being effected without violence. They believe that it is the [208] duty of every responsible person to warn the American workers of this fact; they believe that those who prefer the popular course of telling the American workers that they can rely upon the democratic machine to protect them do but delude and betray those workers most cruelly.

"This then is the communistic view of the use of force and violence. Let us attempt to summarize it.

"The communist regards the banishment of force and violence from human affairs as one of his principal objectives. He believes, moreover, that the achievement of social and international peace is possible, after the tormenting coercions of capitalism have been abolished. But this hope and vision of the future does not blind him to the realities of today. He sees around him a world in which unending and

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

evergrowing violence is being used. He has analysed the causes which are driving man against man in a deadly and fatal struggle both within and between every capitalist community. He is convinced that outbursts of this violence must become ever more frequent and more frightful until they have drowned civilization itself in human blood, unless their cause is removed.

"And the cause of contemporary social and international violence is the private ownership of our fields, factories and mines and their operation for profit.

"The communist is further convinced that for the workers to pledge themselves in no circumstances to use force in the struggle to abolish this system would be to make the abolition of capitalism forever impossible. For the capitalists, all experience teaches, do not hesitate to use any degree of violence in order to perpetuate their system. But the perpetuation of capitalism means ever-recurrent outbreaks of world-wide violence on a scale compared to which the violence involved in the abolition of capitalism is [209] infinitesimal. Hence every communist is convinced that his is the only way in which force and violence can be immediately minimised and ultimately abolished.

"I believe, then, that those who are held back from acceptance of communism by horror at the violence which, they believe, communism in-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "B"—continued.)

volves, misunderstand the issue. It is not communism which involves violence. It is capitalism which tortures the world with violence. Truly communism cannot claim to be able to abolish this violence by a magic stroke. But communism does shew men the way by which the causes of human violence can be eradicated step by step. I do not, of course, suppose that this summary discussion of a great issue will, in itself, convince the doubtful. But if it succeeds in making its readers observe, and reflect upon, the way in which world events develop during the coming years, it will have served its purpose. For then, I think, these events themselves will infallibly demonstrate the truth of the communist contention."

I have quoted this extract from Mr. Strachey, not as an official document or the official position of the Communist party, but as one who expresses the opinion of a recognized authority on Marxism and Communism, for the purpose of study and discussion of these theories.

I would like to now quote some quotations from a spokesman of the Party. This is from, "The People's Front," by Earl Browder, general secretary of the Communist Party, page 209——

Mr. Hennessy: What year was that?

Mr. Andersen: That was printed in 1938. I will offer this in evidence as defendant's exhibit next in order.

(Testimony of William Schneiderman.)

(Document marked

"DEFENDANT'S EXHIBIT C.")

The Witness:

"It is a popular superstition, which it is one of the main tasks of our Party to dispel, that the Communists are anti-democratic. This arises out of a vulgar interpretation of our [210] slogan of the dictatorship of the proletariat as the means of the transition to socialism. The Communists are not and have never been anti-democratic. The Communist program is only realizable through the fullest possible extension of democracy, and the realization of democracy on a scale which has not been dreamed of before in this country.

"The Communist Party is not and has not been the advocate of force and violence. Perhaps one of the best historical examples which vividly gives you the true picture of who are the advocates of force and violence is the situation today in Spain. If, in the future history of America, there is a development of large-scale struggles of a violent character, let me declare categorically here that the responsibility will not rest with the Communist Party nor with the working class upon which the Communist Party bases itself in the first instance."

From the same book, "The People's Front," by Earl Browder, page 239:

(Testimony of William Schneiderman.)

(Defendant's Exhibit C continued.)

"The Communist Party repudiates now as in the past, all theories or proposals looking toward a forcible imposition of Socialism or any utopia upon the majority of the people. We repudiate the 'reckless resolve to seize power' by any minority. If there should arise in America anything similar to the situation in Spain, where the democratic republic while repulsing the fascist invasion was stabbed in the back by the 'uncontrollable extremists' (a minority of the anarchists and the Trotskyist P. O. U. M.,) that we, like our brothers of the Spanish Communist Party would be in the forefront of the struggle to suppress such 'extremists,' who are really agents of fascism, and render them harmless."

From page 266 and 267:

"*We of the Communist Party never did and never will hold to a program of forcible establishment of socialism against the will* [211] *of the people.* While the majority of the people, and above all of the working class, do not yet accept the program of socialism, our program of socialist reconstruction of society is a matter for educational work to win the majority, while our practical and immediate political work is to be in the forefront in the organization of the majority of the workers and of the people generally, against the reactionary menace to their rights and interests, for a program

(Testimony of William Schneiderman.)

(Defendant's Exhibit C continued.)

of betterment of their lives such as the majority is ready to accept and fight for now * * * If our understanding of history is correct, this is the surest and least difficult road to winning the majority for socialism in the long run."

The Court: I suggest counsel get together in reference to the admission of these in the record.

Mr. Hennessy: I am willing to stipulate they can be copied into the record.

Mr. Andersen: Some of these will be introduced as excerpts from them.

Mr. Hennessy: To facilitate the matter, I am willing to stipulate that these excerpts that he has in his hand may be considered read, and they may be copied into the record.

The Court: You can discuss that among yourselves, so that both sides will have a record. We will take a recess for a few minutes.

(After Recess)

Mr. Andersen: There are a few additional quotations that we would like to read into the record, which I believe will save time. The rest of them we will introduce by excerpts and the books themselves.

The Witness: The following quotations are from the "Complete Works of Abraham Lincoln," Gettysburg Edition: letter to Joshua F. Speed, August 24, 1855, Volume II, page 287: [212]

(Testimony of William Schneiderman.)

(Defendant's Exhibit C continued.)

"Our progress in degeneracy appears to me to be pretty rapid. As a nation we began by declaring that 'all men are created equal.' We now practically read it, 'all men are created equal, except Negroes.' When the Know-nothings get control, it will read, 'all men are created equal except Negroes and foreigners and Catholics.' When it comes to this, I shall prefer emigrating to some country where they make no pretense of loving liberty—to Russia, for instance, where despotism can be taken pure, and without the base alloy of hypocrisy."

From the same "Complete Works of Abraham Lincoln," Gettysburg edition, Volume X, page 66; letter to A. G. Hodges:

"I did understand, however, that my oath to preserve the Constitution to the best of my ability imposed upon me the duty of preserving, by every indispensable means, that government—that nation, of which the Constitution was the organic law. Was it possible to lose the nation and yet preserve the Constitution? By general law, life and limb must be protected, yet often a limb must be amputated to save life, but a life is never wisely given to save a limb. I felt that measures otherwise unconstitutional might become lawful by becoming indispensable to the preservation of the Constitution thru the preservation of the nation."

(Testimony of William Schneiderman.)

(Defendant's Exhibit C continued.)

From the same work, "Complete Works of Abraham Lincoln," Gettysburg Edition, Volume I, page 24, speech before Illinois Legislature, January, 1837:

> "The capitalists generally act harmoniously and in concert, to fleece the people, and now that they have got a quarrel with themselves, we are called upon to appropriate the people's money to settle the quarrel."

From "Complete Works of Abraham Lincoln," Gettysburg Edition, Volume I, page 307:

> "* * * And inasmuch as most good things are produced by labor, it follows that all such things of right belong to those whose [213] labor has produced them. But it has so happened, in all ages of the world, that some have labored, and others have without labor enjoyed a major proportion of the fruits. That is wrong, and should not continue. To secure to each laborer the whole product of his labor, **or as nearly as possible**, is a worthy object of any good government."

From "Complete Works of Abraham Lincoln," Gettysburg Edition, Reply at Alton Debate, October 15, 1858, Volume V, page 65:

> "The same spirit says, 'You toil and work and earn bread, and I'll eat it.' No matter in what shape it comes, whether from the mouth of a king who seeks to bestride the people of

(Testimony of William Schneiderman.)

(Defendant's Exhibit C continued.)

his own nation and live by the fruit of their labor or some one race of men as an apology for enslaving another race, it is the same tyrranical principle."

From the same "Complete Works of Abraham Lincoln," Gettysburg Edition, Reply to New York Working Men, March 21, 1864, Volume X, page 53:

"The strongest bond of human sympathy, outside of the family relation, should be one uniting all working people, of all nations, and tongues, and kindreds."

Volume VIII, page 127, from the same "Complete Works of Abraham Lincoln," Annual Message to Congress, December 1, 1862:

"Labor is like any other commodity in the market—increase the demand for it, and you increase the price of it."

The only other quotation I want to give directly is one from the "Communist," of December, 1939:

"The Workers' Party was the first united organization of the American Communists; it was a sharp break with the romantic 'Leftism' of underground days, for which it accepted no responsibility; and it established the first American affiliation to the Communist International as a 'fraternal' affiliate not subject to the organizational rules then being applied in the Communist Parties [214] in Europe. (The 'underground' parties had declared their adhe-

(Testimony of William Schneiderman.)

(Defendant's Exhibit C continued.)

sion to the Communist International but had not been accepted, due to their splits and immaturity.) There has never been any formal change in this relationship between the American Party and the Communist International, the close relationship between which have not been based upon formal statutes and rules."

From "The People's Front," by Earl Browder, Part 2, Chapter 3, pages 197 to 203——

Mr. Andersen: I will offer this entire book in evidence; also the excerpts.

(Book marked "Defendant's Exhibit C," together with excerpts.)

Part of

DEFENDANT'S EXHIBIT "C"

12/12/39—Jas

Browder,

PEOPLE'S FRONT

P. 148-9

Socialism, Fight for

"The problem for practical builders of socialism and fighters for socialism is everywhere and at all times to find the connecting link which ties up the life problems of the masses of the toiling people AT THE PRESENT MOMENT with their largest historical interests that are represented in the future socialist society. They, the tens of millions who provide the moving force of history, must

(Testimony of William Schneiderman.)

(Defendant's Exhibit C continued.)

be convinced UPON THE BASIS OF THEIR OWN EXPERIENCE-IN STRUGGLE of the necessity and inevitability of each successive step of their movement toward socialism. The more they are organized and roused in struggle against the evils of capitalism the quicker they can understand and assimilate the teachings of socialism, and consciously take the path to the new society.

"Now, when capitalism in decay, capitalism rotting and collapsing, is turning more and more to fascism and war, blindly and brutally destroying everything good which had been created in the period of its upward development, it is possible and necessary for us to do everything to get *tens of millions* into organized struggle against these most reactionary manifestations of capitalism. That is the quickest and most direct road to socialism—if the teachings of Marx, Engels, Lenin and Stalin are correct. * * *

"What nonsense it is to think that socialism will come out of the work of an isolated sect to which socialism is a dogma and not a guide to action here and now in the daily struggle against capitalism's worst oppressions! * * * Only the Party of the mass struggle for immediate issues today will become the party of actual socialist construction tomorrow."

(Testimony of William Schneiderman.)

(Defendant's Exhibit C continued.)

Lord Macaulay, in a famous letter written to H. E. Randall of New York on May 25, 1857.

Democracy

"I have long been convinced that institutions purely democratic must, sooner or later, destroy liberty and civilization, or both. If we had a purely democratic government here (England) * * * either the poor would plunder the rich and civilization would perish, or order and property would be saved by a strong military government, and liberty would perish. It is quite plain that your government will never be able to restrain a distressed and discontented majority. For with you the majority is the government and has the rich, who are always a minority, absolutely at its mercy. The day will come when, in the State of New York, a multitude of people, none of whom has had more than half a breakfast, or expects to have more than half a dinner, will choose a legislature. Is it possible to doubt what sort of legislature will be chosen? * * * Either some Caesar or Napoleon will seize the reins of Government with a strong hand, or your Republic will be as fearfully plundered and laid waste by barbarians in the twentieth century as the Roman Empire was in the fifth. * * * Thinking this, of course, I cannot reckon Jefferson among the benefactors of mankind."

(Testimony of William Schneiderman.)
(Defendant's Exhibit C continued.)

Browder,

THE PEOPLE'S FRONT

P. 234

Democracy

"This bold and unequivocal repudiation of Jefferson, the founder of democracy in America, this appeal for the rule of the 'rich who are always a minority,' over the toiling masses of the people, this open appeal for 'some Caesar or Napoleon' who is to 'seize the reins of government with a strong hand' against the majority of the people if that majority attempts to exercise its democratic rights —here is the program of the reactionary bourgeoisie of the U. S. A. * * *"

THE PEOPLE'S FRONT

Revolution, Definition

P. 199

"We have no different definition of revolution than that given to us by Thomas Jefferson.

"Jefferson pointed out that the bloody war of 1776, which was necessary to establish American independence, was not caused by advocacy of force and violence by the patriots of those days but by

(Testimony of William Schneiderman.)

(Defendant's Exhibit C continued)

the determination of a government which was separated from the people to impose its will at all costs. So long as the people can control their government there will be no necessity for a bloody revolution. If the capitalists would submit to the decisions of the American people the change to socialism will be bloodless."

[Endorsed]: Deft's Ex. C. Filed Dec. 12, 1939.

The Witness: The following quotation from the pamphlet, "Stalin-Howard Interview," page 7.

Mr. Andersen: We will offer this in evidence as defendant's exhibit next in order, together with the pamphlet to which reference has been made.

Mr. Hennessy: I do not know on what legal theory an interview between Mr. Howard and Mr. Stalin is admissible; it is purely a statement and not propaganda or a pamphlet issued by the Communist Party to show what their teachings and beliefs are. However, I won't make objection to it. You may enter it.

(Testimony of William Schneiderman.)

(Document marked "Defendant's Exhibit D," together with excerpt.)

Part of

DEFENDANT'S EXHIBIT "D"

STALIN-HOWARD INTERVIEW

P. 7

Revolution Not Exportable

"You see, we Marxists believe that a revolution will also take place in other countries. But it will take place only when the revolutionaries in those countries think it possible, or necessary. The export of revolution is nonsense. Every country will make its own revolution if it wants to, and if it does not want to there will be no revolution. For example, our country wanted to make a revolution and made it, and now we are building a new, classless society. But to assert that we want to make a revolution in other countries, to interfere in their lives, means saying what is untrue, and what we have never advocated."

[Endorsed]: Deft's Ex. D. Filed Dec. 12, 1939.

The Witness: Quotation from "Selected Works of Lenin," Volume VII, page 145.

Mr. Andersen: Before we introduce the next exhibit, the United States District Attorney and I

(Testimony of William Schneiderman.)

have stipulated that we may withdraw the excerpts for the purpose of recopying them in proper legal form and also for the further purpose of furnishing United States Attorney with a copy.

Mr. Hennessy: That is correct.

Mr. Andersen: I offer this volume, "After the Seizure of Power," with the excerpt.

(Document marked "Defendant's Exhibit E," together with excerpt.) [215]

Part of

DEFENDANT'S EXHIBIT "E"

12/12/39—J.A.S.

Lenin,

SELECTED WORKS, VOL. VII

P. 142-3

Restricting Franchise for the Bourgeoisie

"It should be observed that the question of depriving the exploiters of the franchise is PURELY A RUSSIAN QUESTION, and not a question of the dictatorship of the proletariat in general. * * *

"* * * And now it must be said that the question of restricting the franchise is a specifically national question, and not a general question of the dictatorship. One must study the question of restricting the franchise in the light of the SPECIFIC CONDITIONS of the Russian revolution

(Testimony of William Schneiderman.)

(Defendant's Exhibit E continued.)

and the SPECIFIC PATH of its development. This will be done later on in this pamphlet. It would be a mistake, however, to guarantee in advance that the impending proletarian revolutions in Europe will all, or for the most part, be necessarily accompanied by the restriction of the franchise for the bourgeoisie. Perhaps they will. After our experience of the war and of the Russian revolution we can say that it will probably be so; but it is not ABSOLUTELY NECESSARY for the purpose of realising the dictatorship, it is not an ESSENTIAL symptom of the logical concept 'dictatorship,' it does not enter as an ESSENTIAL condition in the historical and class concept 'dictatorship.'

* * * * * * *

"The question in which countries, and in the presence of what special national features of this or that capitalism, democracy for the exploiters will be infringed upon or restricted (wholly or in part) is a question of the special national features of this or that capitalism, of this or that revolution. The theoretical question is an entirely different one, viz., is the dictatorship of the proletariat possible WITHOUT INFRINGING DEMOCRACY for the EXPLOITING class?"

(Testimony of William Schneiderman.)

(Defendant's Exhibit E continued.)

Lenin,

SELECTED WORKS, VOL. VII

P. 161

Disfranchisement of the Bourgeoisie

"As I have already pointed out, the disfranchisement of the bourgeoisie is not necessarily an element of the dictatorship of the proletariat. And in Russia, the Bolsheviks, who long before October advanced the slogan of proletarian dictatorship, did not say anything in advance about disfranchising the exploiters. *This* element of the dictatorship did not make its appearance 'according to the plan' of any particular party it emerged of its own accord in the course of the struggle. Of course, Kautsky, the historian, failed to observe this. He failed to understand that even when the Mensheviks, the advocates of compromise with the bourgeoisie, predominated in the Soviets, the bourgeoisie of its own accord separated itself from the Soviets, boycotted them, put itself up in opposition to them and intrigued against them. The Soviets arose without any constitution and existed for *more than twelve months* (from the spring of 1917 to the summer of 1918) without any constitution. The rage of the bourgeoisie against these independent and omnipotent (because all-embracing) organizations of the oppressed, the unscrupulous self-seeking and despicable fight the bourgeoisie waged against the Soviets; and, lastly,

(Testimony of William Schneiderman.)

(Defendant's Exhibit E continued.)

the overt participation of the bourgeoisie—from the Cadets to the Right Socialist-Revolutionaries, from Milyukov to Kerensky—in the Kornilov mutiny, all *paved the way* for the formal exclusion of the bourgeoisie from the Soviets."

Lenin,

SELECTED WORKS, VOL. VII

P. 125-6

Peaceful Revolution

"Further, was there in the seventies of the last century anything which made England and America an exception *in regard to what we are now discussing?* It will be obvious to anyone familiar with the requirements of science in the domain of historical problems that such a question must be put. To fail to put it is tantamount to falsifying science, to engaging in sophistry. And, the question having been put, there can be no doubt as to the reply: the revolutionary dictatorship of the proletariat is violence against the bourgeoisie; and the necessity for such violence is PARTICULARLY created, as Marx and Engels have repeatedly explained in detail (particularly in *The Civil War in France* and in the preface to it), by the existence of MILITARISM AND BUREAUCRACY. But it is pre-

(Testimony of William Schneiderman.)

(Defendant's Exhibit E continued.)

cisely these institutions that were nonexistent in England and America in the seventies of the nineteenth century, when Marx made his observations (they DO exist in England and in America NOW).

* * * * * * *

"Kautsky, the 'historian,' so shamelessly falsifies history that he forgets the fundamental fact that pre-monopoly capitalism, which reached its zenith in the seventies of the nineteenth century, was, by virtue of its fundamental ECONOMIC traits (which were most typical in England and America) distinguished by its relative attachment to peace and freedom. Imperialism, i.e., monopoly capitalism, which finally matured only in the twentieth century, is, by virtue of its fundamental ECONOMIC traits, distinguished by the least attachment to peace and freedom, and by the greatest and universal development of militarism everywhere. To 'fail to notice' this in discussing the extent to which a peaceful or violent revolution is typical or probable is to stoop to the position of a common or garden lackey of the bourgeoisie."

Lenin,

SELECTED WORKS, VOL. VII

P. 145

Soviets—Russian Form of Proletarian Dictatorship

"The Soviets are the Russian form of the prole-

(Testimony of William Schneiderman.)

(Defendant's Exhibit E continued.)

tarian dictatorship. If a Marxian theoretician, writing on the dictatorship of the proletariat, had seriously set to work to study the subject (and not merely to repeat the petty-bourgeois lamentations over dictatorship, as Kautsky does in repeating the Menshevik melodies) he would first of all have given a general definition of dictatorship, and would then have examined its peculiar national form, the Soviets; he would have given his critique of them as one of the forms of the dictatorship of the proletariat."

The Witness: Chapter I, Article X, of the Constitution of the U. S. S. R.

Mr. Andersen: I offer the excerpt, together with the pamphlet, in evidence.

(Document marked "Defendant's Exhibit F," together with excerpt)

Part of

DEFENDANT'S EXHIBIT "F"

12/12/39—J.A.S.

CONSTITUTION OF THE U.S.S.R.

Chap. I, Art. 10

"The right of personal property of citizens in their income from work and in their savings, and

(Testimony of William Schneiderman.)

in their dwelling houses and auxiliary household economy, their domestic furniture and utensils and objects of personal use and comfort, as well as the right of inheritance of personal property of citizens, are protected by law.

(International Publishers, New York)

The Witness: "Fighting for Peace," by Earl Browder, pages 131 and 132.

Mr. Andersen: Q. Have you the excerpt there?

A. Yes.

Mr. Andersen: We offer the pamphlet and excerpt as Defendant's Exhibit "G."

(Document marked "Defendant's Exhibit "G," together with excerpts therefrom.)

Part of

DEFENDANT'S EXHIBIT "G"

12/12/39—J.A.S.

Force and Violence

Telegram sent to the Chairman of the New York Senate Judiciary Committee at Albany, March 15, 1939 by Earl Browder.

"Today's press carries news of Senator McNaboe's bill which would bar persons believing in overthrow of government by force and violence from holding public office. The McNaboe bill, while it does not apply to the Communist Party which

(Testimony of William Schneiderman.)

(Defendant's Exhibit G—continued)

repudiates any theory of overthrow of democracy, nevertheless has given rise to wide misconceptions and may make necessary a public hearing to clarify the situation. The bill as drafted is clearly unconstitutional and can be used against all civil servants and public officials who take a progressive position on any question. For the information of your committee and your fellow legislators let me state that the Communist Party unreservedly supports American democracy and the American constitution and fights for the maintenance and extension of democracy. Irrespective of what may have been said or may have been written to the contrary, the following is a true statement, in brief, of the Communist position:

"1. The Communist Party opposes the overthrow of American democracy. On the contrary, it supports American democracy and urges the widest possible common front of supporters of democracy in order to maintain it.

"2. The Communist Party does not advocate force and violence. It is not a party of anarchists, terrorists, or conspirators. By no stretch of the imagination does it come under the terms of the criminal anarchy statute or any law patterned after that statute.

"3. The Communist Party is an American Party and is not subject to any foreign control. The Communist Party is an American party from the

(Testimony of William Schneiderman.)

(Defendant's Exhibit G—continued)

ground up. Its policy is based entirely upon American needs and it is absolutely not subject to any decisions except its own conventions and officials elected thereby.

"The Communist Party reminds the Committee that undemocratic legislation like the McNaboe measure can only lead the country along the road to Hitlerism. The McNaboe bills start off ostensibly with the Communists but always wind up, as we see in the tragic case of Austria, with the Schuschniggs, the Miklases, the Catholics, Jews and liberals. You and I and our fellow Americans in the State legislature certainly do not want such developments here.

(Signed) EARL BROWDER
General Secretary, C.P.U.S.A."

Browder,

FIGHTING FOR PEACE

Socialism, Achieve Only With Majority

P. 53

"We of the Communist Party have our own particular views about the necessities of future progress of the United States and of the world. We believe that the final solution of all our problems will require the transfer of our national econ-

(Testimony of William Schneiderman.)

(Defendant's Exhibit G—continued)

omy from private ownership to social ownership and operation for the common benefit of all. We will continue to do our utmost to convince the majority of the American people to that program. But we are keenly aware that a relatively small minority of the population as yet share our views on this fundamental reorganization. We have a long and arduous task of education ahead of us, before we can lead a majority of the American people to the establishment of socialism * * *"

Browder,

FIGHTING FOR PEACE

P. 131-2

"Allow me to categorically state, that we stand one hundred per cent, under all circumstances, for the power of the majority of the people to control the destinies of our country. We of the Communist Party will fight with all our power to defeat, offering our lives if necessary, any and every effort, whether it comes from within or from without, to impose over the American people and nation the will of any selfish minority group or party or clique or conspiracy."

(Testimony of William Schneiderman.)

(Defendant's Exhibit G—continued)

Browder,

FIGHTING FOR PEACE

P. 43-44

Bourgeois Democracy—Limitations of

"We are, of course, keenly aware of the limitations of democracy under the modern capitalist system. This democracy based upon private property in the means of production has even lost much of the strength of its early period, because it has largely lost its economic foundation. Where one hundred and fifty years ago widespread distribution of private property, based upon individual production, was itself something of a guarantee, while it lasted, of the democratic rights and powers of the mass of the people, such private property today has largely disappeared, and has been replaced by giant corporations which occupy all the commanding heights of the national economy. This corporate economy is the antithesis of democracy: its control is the acme of self-perpetuating oligarchy, with the oligarchs constantly diminishing in number, a small fraction of one per cent of the population exercising decisive power over the whole economy upon which the livelihood of all depends.

"So long as the democratic forms of government follow the leadership of the oligarchs of industry, the economic royalists, these forms are tolerated and even defended by them. When, however, as today has clearly shown, there is a conscious split

(Testimony of William Schneiderman.)

(Defendant's Exhibit G—continued)

between the mass of the democratic electorate, and the economic rulers, then as President Roosevelt pointed out in his Constitution Day speech last year, the economic royalists begin to question why they should continue to support a democracy which threatens to curtail their special privileges, and they begin to turn toward fascism. This is the danger of fascism from within our country, that rises simultaneously with the fascist aggression from abroad and develops in conscious collaboration with the foreign fascist powers * * *"

[Endorsed]: Deft's Ex. G. Filed Dec. 12, 1939.

The Witness: "Social and National Security," by Earl Browder, page 37.

Mr. Andersen: We will offer the pamphlet and excerpt as Defendant's Exhibit "H."

(Pamphlet and excerpt marked Defendant's Exhibit H.")

Part of

DEFENDANT'S EXHIBIT "H"

Browder,

SOCIAL AND NATIONAL SECURITY

P. 37

American National Interests

"We are an American Party, composed of American citizens. We view all our problems in the light

(Testimony of William Schneiderman.)

(Defendant's Exhibit H—con ed)

of the National interests of the Unite States. The national interests are not the interests of the pro-fascist circles of monopoly capital, of imperialism; they are the interests of the great majority of the people, the workers, the farmers, and the toiling middle classes, whose labor and efforts and sacrifices have formed our nation and built it into the richest and technically most advanced in the world * * *"

[Endorsed]: Deft's Ex. H. Filed Dec. 12, 1939.

The Witness: "Fighting for Peace," by Earl Browder, page 53.

Mr. Andersen: I will offer the excerpt in evidence as part of Exhibit "G."

The Witness: A telegram sent to the Chairman of the New York Senate Judiciary Committee, at Albany, March 15, 1939, by Earl Browder, from the book, "Fighting for Peace."

Mr. Andersen: I ask that it be offered as part of Defendant's Exhibit "G."

The Witness: Definition of revolution, from the "People's Front," by Earl Browder, page 199.

Mr. Andersen: That will be part of Defendant's Exhibit "C."

The Witness: "Leninism," by Joseph Stalin, Volume 1, page 288.

(Testimony of William Schneiderman.)

Mr. Andersen: We offer the book and excerpt in evidence.

(Document marked "Defendant's Exhibit I," together with excerpt therefrom.) [216]

Part of

DEFENDANT'S EXHIBIT "I"

LENINISM, VOL. I

P. 383-4

Orders From Moscow

"The assertion that the American Communists work under 'orders from Moscow' is absolutely untrue. There are no Communists in the world who would agree to work 'under orders' from outside against their own convictions and will and contrary to the requirements of the situation. Even if there were such Communists they would not be worth a cent. Communists are bold and courageous, they are fighting against a host of enemies. The value of a Communist among other things, lies in that he is able to defend his convictions. Therefore, it is strange to speak of American Communists as not having their own convictions and being capable only of working according to 'orders' from outside.

"The only part of the labor leaders' assertion that has any truth in it at all is that the American Communists are affiliated to an international Communist organization and from time to time consult with the central body of this organization on one question

(Testimony of William Schneiderman.)

(Defendant's Exhibit I—continued)

or another. But what is there bad in this? Are the American labor leaders opposed to an international workers' center? It is true they are not affiliated to Amsterdam, not because they are opposed to an international workers' center as such, however, but because they regard Amsterdam as being too radical. (The A.F. of L. has since affiliated)

"Why may the capitalists organize internationally and the working class, or part of it, not have its international organization? Is it not clear that Green and his friends in the American Federation of Labor slander the American Communists when they slavishly repeat the capitalist legends about 'orders from Moscow'?"

An Interview with Stalin by the American Trade Union Delegation, 1927.

COLLECTED WORKS, RUSSIAN EDITION

Vol. XXIV—P. 508

Dictatorship of the Proletariat

"In Russia, the dictatorship of the proletariat must inevitably differ in certain special features from that in the advanced countries, by reason of the very great backwardness and petty-bourgeois character of our country. But the basic forces and the basic forms of social economy are just the same

(Testimony of William Schneiderman.)

(Defendant's Exhibit I—continued)

in Russia as in any capitalist country, so that THESE SPECIAL FEATURES CANNOT AFFECT THE MAIN POINT."

LENINISM,

Joseph Stalin

Vol. I—P. 288

Dictatorship of the Proletariat—Not Dictatorship of the Party

"Can the Party impose its leadership on the class by force? No, it cannot. At all events SUCH a leadership cannot be to any degree lasting. If the Party wishes to remain the party of the proletariat, it must know that it is, above all and mainly, the GUIDE, the LEADER, the TEACHER of the working class. We must not forget what Lenin said in this connection in his pamphlet STATE AND REVOLUTION:

" 'By educating a workers' party, Marxism educates the vanguard of the proletariat, capable of assuming power and of leading the whole people to socialism, of directing and organizing the new order, of being the TEACHER, GUIDE AND LEADER of all the toiling and exploited in the task of building up their social life without the bourgeoisie and against the bourgeoisie.' "

(Testimony of William Schneiderman.)

(Defendant's Exhibit I—continued)

(Collected Works, Vol. XXI, Book II, pp. 169-170. Also State and Revolution, Little Lenin Library, end of chap. 2, part 1.)

LENINISM,

Joseph Stalin

Vol. I—P. 282-283

Dictatorship of the Proletariat—Not Dictatorship of the Party

"Fifthly, the concept of the dictatorship of the proletariat is a concept of the state. The dictatorship of the proletariat must necessarily include the concept of violence. There is no dictatorship without violence if dictatorship is to be understood in the strict sense of the term. Lenin defines the dictatorship of the proletariat as "power based directly on violence". (Collected Works, Russian edition, Vol. XIX, p. 315). Hence, to talk of the dictatorship of the Party as applying to the proletarian class, and to identify it with the dictatorship of the proletariat, is tantamount to saying that in relation to its own class, the Party must be not only a guide, not only a leader and teacher, but must also be a sort of state power employing violence against it. Consequently, anyone who identifies the 'dictatorship of the Party' with the dictatorship

(Testimony of William Schneiderman.)

(Defendant's Exhibit I—continued)

of the proletariat tacitly starts out from the proposition that the prestige of the Party can be built up on violence, which is absurd and absolutely incompatible with Leninism. The prestige of the Party is sustained by the confidence of the working class. The confidence of the working class is gained not by violence—violence only kills it—but by the Party's correct theory, by the Party's correct policy, by the Party's devotion to the working class, by its contact with the masses of the working class, by its readiness and its ability to CONVINCE the masses of the correctness of its slogans."

LENINISM,

Joseph Stalin

Vol. I Pp. 108-9

Dictatorship of the Proletariat

"The dictatorship of the proletariat is not simply the governing upper stratum 'cleverly selected' by the careful hand of an 'experienced strategist' and 'sensibly relying' on the support of one section or another of the population. The dictatorship of the proletariat is a class alliance between the proletariat and the toiling masses of the peasantry, for the purpose of overthrowing capital, for bringing about the final victory of socialism, an alliance based on the condition that its leading force is the proletariat."

(Testimony of William Schneiderman.)

(Defendant's Exhibit I—continued)

LENINISM,

Joseph Stalin

Vol. I, P. 285-286

Dictatorship of the Proletariat—Not Dictatorship of the Party

"1) The prestige of the Party and the iron discipline of the working class indispensable for the dictatorship of the proletariat are built up not on fear, nor on the 'unrestricted' rights of the Party, but upon the confidence of the working class in the Party and on the support which the Party receives from the working class.

"2) Confidence of the working class in the Party is not attained at one stroke, and not through the medium of violence directed against the working class, but by the Party's prolonged work among the masses, by a correct Party policy, by the ability of the Party to convince the masses through their own experience of the correctness of its policy, and by the ability of the Party to gain the support of the working class and to induce the masses of the working class to follow its lead.

"3) Without a correct Party policy, strengthened by the experience of the struggle of the masses, and without the confidence of the working class, there is not and there cannot be real Party leadership.

"4) If the Party and the Party leadership enjoy the confidence of the class, and if this leader-

(Testimony of William Schneiderman.)

(Defendant's Exhibit I—continued)

ship is a real leadership, they cannot be contrasted with the dictatorship of the proletariat, because without the leadership of the Party (the 'Dictatorship' of the Party) enjoying the confidence of the working class, a dictatorship of the proletariat that would be at all firm is impossible.

"Without these conditions 'prestige of the Party' and 'iron discipline' are empty phrases, and idle boast and a swindle."

[Endorsed]: Deft's Ex. "I". Filed Dec. 12, 1939.

The Witness: From the same Volume I, "Leninism," by Joseph Stalin, pages 383 and 384.

Mr. Andersen: I offer the further excerpts as part of exhibit "I."

The Witness: From the "Class Struggles in France," by Karl Marx, page 25.

Mr. Andersen: We offer the excerpt and the volume as Defendant's Exhibit J."

(Document and excerpt marked "Defendant's Exhibit J.")

(Testimony of William Schneiderman.)

Part of

DEFENDANT'S EXHIBIT "J"

12/12/39—J. A. S.

Marx,

THE CLASS STRUGGLES IN FRANCE

(Introduction by Engels)

Pp. 29-30

Revolt of the Christians

"It is now, almost to the year, sixteen hundred years since a dangerous party of revolt made a great commotion in the Roman Empire. It undermined religion and all the foundations of the state; it flatly denied that Caesar's will was the supreme law; it was without a fatherland, international; it spread over all countries of the Empire from Gaul to Asia, and beyond the frontiers of the Empire. It had long carried on an underground agitation in secret; for a considerable time, however, it had felt itself strong enough to come out into the open. This party of revolt, who were known by the name of christians, was also strongly represented in the army; whole legions were christian. When they were ordered to attend the sacrificial ceremonies of the pagan established church, in order to do the honours there, the soldier rebels had the audacity to stick peculiar emblems—crosses—on their helmets in protest. Even the wonted barrack cruelties

(Testimony of William Schneiderman.)

(Defendant's Exhibit J—continued.)

of their superior officers were fruitless. The Emperor, Diocletian, could no longer quietly look on while order, obedience and discipline in his army were being undermined. He intervened energetically, while there was still time. He passed an anti-Socalist, I should say, anti-christian, law. The meetings of the rebels were forbidden, their meeting halls were closed or even pulled down, the christian badges, crosses, etc., were like the red handkerchiefs in Saxony, prohibited. Christians were declared incapable of holding offices in the state, they were not to be allowed even to become corporals. Since there were not available at that time judges so well trained in 'respect of persons' as Herr von Köller's anti-revolt bill assumes, the christians were forbidden out of hand to seek justice before a court. This exceptional law was also without effect. The christians tore it down from the walls with scorn; they are even supposed to have burnt the Emperor's palace in Nicomedia over his head. Then the latter revenged himself by the great persecution of christians in the year 303, according to our chronology. It was the last of its kind. And it was so effective that seventeen years later the army consisted overwhelmingly of christians, and the succeeding autocrat of the whole Roman Empire, Constantine, called the Great by the priests, proclaimed christianity as the state religion."

(Testimony of William Schneiderman.)
(Defendant's Exhibit J—continued.)

Marx,

THE CLASS STRUGGLES IN FRANCE

(Introduction by Engels)

P. 25

Revolution—Task of the Majority

"The time of surprise attacks, of revolutions carried through by small conscious minorities at the head of unconscious masses, is past. Where it is a question of a complete transformation of the social organization, the masses themselves must also be in it, must themselves already have grasped what is at stake, what they are going in for *(with body and soul)*. The history of the last fifty years has taught us that. But in order that the masses may understand what is to be done, long, persistent work is required, and it is just this work which we are now pursuing, and with a success which drives the enemy to despair."

[Note: All italics in this exhibit are by the author.]

[Endorsed]: Deft's Ex. J. Filed Dec. 12, 1939.

The Witness: From Volume I of "Leninism," pages 283, 285 and 286.

Mr. Andersen: That will be offered as part of Defendant's Exhibit "I."

The Witness: From "The Russian Revolution," by Lenin and Stalin, page 110.

(Testimony of William Schneiderman.)

Mr. Andersen: We offer the book and the excerpt as Defendant's Exhibit "K."

(Book and excerpt were marked "Defendant's Exhibit K.")

Part of

DEFENDANT'S EXHIBIT "K"

12/12/39—J. A. S.

Lenin & Stalin,

THE RUSSIAN REVOLUTION

P. 110 .

Democracy—The Will of Majority Bourgeois Republic Conflicts with the Will of Majority

"Certain definite and concrete conditions are required to make it really possible for the majority in the state to decide. It requires, first, the establishment of a state system, of a form of state power, which would permit the possibility of deciding matters by a majority, and which would guarantee this possibility actually being realised. Secondly, it requires that this majority, by its class composition, by the interrelation of classes inside (and outside) this majority, should be able to draw the chariot of state harmoniously and effectively. Every Marxist knows that these two concrete conditions are of decisive importance in the question of a majority of the people and of the direction of state affairs in accordance with the will of the majority * * *."

(Testimony of William Schneiderman.)

(Defendant's Exhibit "K"—continued.)

"If the political power in the state is in the hands of a class the interests of which coincide with the interests of the majority, the administration of that state in accordance with the real will of the majority will be possible.

"If, however, the political power is in the hands of a class the interests of which differ from the interests of the majority, any form of majority rule is bound to lead to the duping or suppression of the majority. Every bourgeois republic provides hundreds and thousands of examples of this kind. In Russia the bourgeoisie rules both economically and politically. Its interests, particularly during the imperialist war, are in violent conflict with the interests of the majority. Hence, from a materialist and Marxist, and not from a formal and juridical standpoint, the whole point is to expose this conflict, and to endeavor to prevent the masses from being duped by the bourgeoisie."

[Endorsed]: Deft's Ex. K. Filed Dec. 12, 1939.

The Witness: From "A Letter to American Workers," by Lenin, pages 16 and 17.

Mr. Andersen: I will offer the pamphlet and excerpt as Defendant's Exhibit "L."

(Pamphlet and excerpt marked "Defendant's Exhibit L.")

(Testimony of William Schneiderman.)

Part of

DEFENDANT'S EXHIBIT "L"

LETTER TO AMERICAN WORKERS

Revolutionary Traditions—And Today

"The American people has a revolutionary tradition adopted by the best representatives of the American proletariat, who gave repeated expression to their full solidarity with us, the Bolsheviks. This tradition is the war of liberation against the English in the 18th and the Civil War in the 19th century. If we are to take only into consideration the 'destruction' of some branches of industry and national economy, America in 1870 was in some respects *behind* 1860. But what a pedant, what an idiot is he who denies on such grounds the greatest, world-historic, progressive and revolutionary significance of the American Civil War of 1861-1865!"

"Representatives of the bourgeoisie understand that it was worth letting the country go through long years of civil war, the abysmal ruin, destruction and terror which are connected with every war for the sake of the overthrow of Negro slavery and the overthrow of the rule of slave-owners."

[Note: All italics in this exhibit are by the author.]

[Endorsed]: Deft's Ex. "L". Filed Dec. 12, 1939.

The Witness: From the "History of the Communist Manifesto of Marx and Engels," page 3.

(Testimony of William Schneiderman.)

Mr. Andersen: I offer the book and the excerpt in evidence.

(Book and excerpt marked "Defendant's Exhibit M.")

Part of

DEFENDANT'S EXHIBIT "M"

Adoratsky,

THE HISTORY OF THE COMMUNIST MANIFESTO

Basis for Communist Manifesto

Pp. 3-9

"The Manifesto of the Communist Party (the Communist Manifesto) saw the light of day shortly before the February revolution of 1848. In this brilliant work written ninety years ago—seventy years before the victory won in 1917 by the great socialist revolution—Marx and Engels announced the oncoming proletarian revolution, gave strictly scientific grounds for its historic necessity, and foretold the inevitable downfall of the bourgeoisie and the victory of the proletariat."

"The theoretical conclusions of the Communists are in no way based on ideas or principles that have been invented, or discovered, by this or that would-be universal reformer.

" 'They merely express, in general terms, actual relations springing from an existing class struggle, from a historical movement going on under our very eyes.' " (Marx Selected Works, Vol. I, p. 219)

[Endorsed]: Deft's Ex. M. Filed Dec. 12, 1939.

(Testimony of William Schneiderman.)

The Witness: From "The Selected Works of Lenin," Volume VI, pages 29, 33 to 93, 321 and 322.

Mr. Andersen: I offer the volume and the excerpts in evidence.

(Book and excerpts marked "Defendant's Exhibit N.") [217]

Part of

DEFENDANT'S EXHIBIT "N"

Lenin,

SELECTED WORKS, VOL. VI

Win Majority—Revolution

Definition of Revolution

Pp. 29-33

"In order to obtain the power of state the class conscious workers must win the majority to their side. *As long as* no violence is used against the masses, there is no other road to power. We are not Blanquists, we are not in favor of the seizure of power by a minority."

"The transfer of state power from one class to another *class* is the first, the principal, the basic sign of a *revolution,* both in the strictly scientific and in the practical political meaning of the term."

[Note: All italics in this exhibit are by the author.]

(Testimony of William Schneiderman.)

(Defendant's Exhibit N—continued.)

Lenin,

SELECTED WORKS, VOL. VI

Revolution—Majority

P. 293

"If a revolutionary party has not a majority among the front ranks of the revolutionary classes and in the country generally, there can be no question of insurrection. Furthermore, insurrection requires: 1) that the revolution shall have assumed a national scale; 2) that the old government, for instance the 'coalition' government, shall have reached a stage of complete moral and political bankruptcy; 3) that all the intermediate elements, i. e., those who do *not* fully support the government, although they fully supported it yesterday, shall have reached an extreme state of vacillation."

Pp. 321-2

"Marxism is an extremely profound and many-sided doctrine. It is, therefore, not surprising that *scraps* of quotations from Marx—especially when the quotations are *not* to the point—can always be found among the 'arguments' of those who are breaking with Marxism. A military conspiracy is Blanquism *if* it is not organized by the party of a definite class; *if* its organizers have not reckoned with the political situation in general and the international situation in particular; *if* the party in question does not enjoy the sympathy of the ma-

(Testimony of William Schneiderman.)

(Defendant's Exhibit N—continued.)

jority of the people, as proved by definite facts; *if* the development of events in the revolution has not led to the virtual dissipation of the illusions of compromise entertained by the petty bourgeoisie; *if* the majority of the organs of the revolutionary struggle which are recognized to be 'authoritative' or have otherwise established themselves, such as the Soviets, have not been won over; *if* in the army (in time of war) sentiments hostile to a government which drags out an unjust war against the will of the people have not become fully matured; *if* the slogans of the insurrection (such as 'All power to the Soviets,' 'Land to the peasants,' 'Immediate proposal of a democratic peace to all the belligerent peoples, coupled with the immediate abrogation of all secret treaties and secret diplomacy,' etc.) have not acquired the widest renown and popularity; *if* the advanced workers are not convinced of the desperate situation of the masses and of the support of the countryside, as demonstrated by an energetic peasant movement, or by a revolt against the landlords and against the government that defends the landlords; *if* the economic situation in the country offers any real hope of a favorable solution of the crisis by peaceful and parliamentary means."

[Endorsed]: Deft's Ex. N. Filed Dec. 12, 1939.

(Testimony of William Schneiderman.)

The Witness: From "The Bourgeois to the Proletarian Revolution," by Lenin, with excerpts.

From "The People's Front," by Browder, at pages 148 and 149.

Mr. Andersen: I will offer the excerpt as part of Exhibit "C."

The Witness: From the "Class Struggles in France," pages 29 and 30.

Mr. Andersen: I will offer this excerpt as part of Exhibit "J."

The Witness: "Class Struggles in France," "Leninism," Volume I, pages 108 and '9.

Mr. Andersen: I offer that as part of Defendant's Exhibit "I."

The Witness: From the "Selected Works of Lenin," Volume V, page 174.

Mr. Andersen: I will offer this volume, with the excerpt, as Defendant's Exhibit "O."

(Document, "Imperialism and Imperialist War," with the excerpt, was marked "Defendant's Exhibit O.")

Part of

DEFENDANT'S EXHIBIT "O"

Lenin,

SELECTED WORKS, VOL. V

P. 174

Revolutionary Situation

"A Marxist cannot have any doubt that a revolution is impossible without a revolutionary situa-

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[Note: All italics in this exhibit are by the author.]

(Testimony of William Schneiderman.)

(Defendant's Exhibit O—continued.)

tion; furthermore, not every revolutionary situation leads to revolution. What, generally speaking, are the symptoms of a revolutionary situation? We shall certainly not be mistaken if we point to the following three main symptoms: 1) when it is impossible for the ruling classes to maintain their rule in an unchanged form; when there is a crisis, in one form or another, among the 'upper classes,' a crisis in the policy of the ruling class which causes fissures, through which the discontent and indignation of the oppressed classes burst forth. Usually, for a revolution to break out it is not enough for the 'lower classes to refuse' to live in the old way; it is necessary also that the 'upper classes should be unable' to live in the old way; 2) when the want and suffering of the oppressed classes have become more acute than usual; 3) when, as a consequence of the above causes, there is a considerable increase in the activity of the masses, who in 'peace time' quietly allow themselves to be robbed, but who in turbulent times are drawn both by the circumstances of the crisis and by the 'upper classes' themselves into independent historical action.

"Without these objective changes, which are not only independent of the will of separate groups and parties, but even of separate classes, a revolution, as a general rule, is impossible. The sum total of all these objective changes is called a revolutionary situation * * *"

(Testimony of William Schneiderman.)

(Defendant's Exhibit O—continued.)

"* * * not every revolutionary situation gives rise to revolution; revolution arises only out of such a situation when, to the above-mentioned objective changes, a subjective change is added, namely, the ability of the revolutionary *class* to carry out revolutionary mass actions *strong* enough to break (or to undermine) the old government, which never, not even in a period of crisis, 'falls,' if it is not 'dropped'."

Lenin,

SELECTED WORKS, VOL. V

P. 303-4

Revolution—The Action of the People—

Not a 'Putsch'

"The term 'putsch', in the scientific sense of the word, may be employed only when the attempt at insurrection has revealed nothing but a circle of conspirators or stupid maniacs, and has aroused no sympathy among the masses. The century-old Irish national movement, having passed through various stages and combinations of class interests, expressed itself, *inter alia*, in a mass Irish National Congress in America * * * which passed a resolution calling for Irish independence—it expressed itself in street fighting conducted by a section of the urban petty-bourgeoisie and a *section of the workers* after a long preiod of mass agitation, demonstra-

(Testimony of William Schneiderman.)

(Defendant's Exhibit O—continued.)

tions, suppression of papers, etc. Whoever calls *such* an uprising a 'putsch' is either a hardened reactionary, or a doctrinaire hopelessly incapable of picturing to himself a social revolution as a living phenomenon.

"To imagine that social revolution is *conceivable* without revolts by small nations in the colonies and in Europe, without the revolutionary outbursts of a section of the petty bourgeoisie *with all its prejudices,* without the movement of non-class conscious proletarian and semi-proletarian masses against the oppression of the landlords, the church, the monarchy, the foreign nations, etc.—to imagine that means *repudiating social* revolution. Only those who imagine that in one place an army will line up and say, 'we are for socialism' and in another place another army will say, 'we are for imperialism,' and that this will be the social revolution, only those who hold such a ridiculously pedantic opinion, could villify the Irish Rebellion by calling it a 'putsch'.

"Whoever expects a 'pure' social revolution will *never* live to see it. Such a person pays lip service to revolution without understanding what revolution is.

"The Russian Revolution of 1905 was a bourgeois-democratic revolution. It consisted of a series of battles in which all the discontented classes, groups and elements of the population participated. Among these there were masses imbued with the

(Testimony of William Schneiderman.)

(Defendant's Exhibit O—continued.)

crudest prejudices, with the vaguest and most fantastic aims of struggle; there were small groups which accepted Japanese money, there were speculators and adventurers, etc. *Objectively,* the mass movement broke the back of tsarism and paved the way for democracy; for that reason the class conscious workers led it.

"The socialist revolution in Europe *cannot be anything else* than an outburst of mass struggle on the part of all and sundry of the oppressed and discontented elements. Sections of the petty bourgeoisie and of the backward workers will inevitably participate in it—without such participation, *mass* struggle is *impossible,* without it *no* revolution is possible—and just as inevitably will they bring into the movement their prejudices, their reactionary fantasies, their weaknesses and errors. But *objectively* they will attack *capital,* and the class conscious vanguard of the revolution, the advanced proletariat, expressing this objective truth of a heterogeneous and discordant, motley and outwardly incohesive, mass struggle, will be able to unite and direct it, to capture power, to seize the banks, to expropriate the trusts (hated by all, though for different reasons) and introduce other dictatorial measures which in their totality will amount to the overthrow of the bourgeoisie and the victory of socialism, which, however, will by no means immediately 'purge' itself of petty-bourgeois slag."

[Endorsed]: Deft's Ex. O. Filed Dec. 12, 1939.

(Testimony of William Schneiderman.)

The Witness: From the same book, pages 303 and 304.

Mr. Andersen: I will offer it as a part of Defendant's Exhibit "O."

The Witness: Volume VII, from "Lenin's Selected Works," pages 125 and 126.

Mr. Andersen: I will introduce that as part of Exhibit "E."

The Witness: The same works, at pages 142 and 143, and page 161.

Mr. Andersen: I will offer those as part of Defendant's Exhibit "E."

The Witness: From "The People's Front," by Earl Browder, at page 334.

Mr. Andersen: I offer that as a further portion of Defendant's [218] Exhibit "C."

The Witness: From the pamphlet, "Lenin Speaks to the Youth."

Mr. Andersen: I will offer the pamphlet and excerpt as Defendant's Exhibit "P".

(Document and excerpt marked "Defendant's Exhibit P.")

Part of

DEFENDANT'S EXHIBIT "P"

LENIN SPEAKS TO THE YOUTH

P. 18

What Is a Communist—What Is Communism?

"We call ourselves Communists. What is a Communist? The word Communist is a Latin word

(Testimony of William Schneiderman.)

(Defendant's Exhibit "P"—continued.)

derived from the word 'common'. Communist society is a society in which all things—the land, the factories—are owned in common. Communism means working in common."

[Endorsed]: Def't's Ex. "P". Filed Dec. 12, 1939.

The Witness: From "Fighting for Peace," by Earl Browder, pages 33 and 34.

Mr. Andersen: I offer those excerpts as part of Defendant's Exhibit "G."

The Witness: I want to also offer two quotations here which are not official documents of the Communist Party. They are the testimony of experts at the hearing on the deportation of Harry Bridges, by Professor Harold Chapman Brown, Dean of Philosophy at Stanford University, and Professor Walter Thompson, Instructor in Political Science at Stanford University. They are recognized authorities on interpreting Marxism and Communist theories for students; and, although they are not in any way connected with the Communist Party, we recognize their interpretation of the Communist theory as authority.

Mr. Hennessy: The statements, as I understand it, are simply the written papers prepared by each of the professors when they appeared at the Bridges hearing and not their entire testimony?

The Witness: That is right.

(Testimony of William Schneiderman.)

Mr. Hennessy: I am willing to stipulate that the statements, the direct and cross-examination and redirect examination, given at the Bridges hearing by each of those professors, may be made a part of the record in this case. I would like to have the cross-examination also included, as long as a part of the record is put in.

Mr. Andersen: I have not read the cross-examination or any further examination that may have been made. [219]

The Court: Under the rule, he is entitled, if part goes in, to have it go in in its entirety.

Mr. Andersen: I have no objection.

Mr. Hennessy: I will have the entire record——

Mr. Andersen: I have no objection to the entire record.

Mr. Hennessy: We can have it prepared and hand it to the reporter, so he can copy it right in the record in the proper way.

Mr. Andersen: I have no objection to it at all,—the entire record of the testimony, direct and cross-examination of Professors Harold Chapman Brown and Walter Thompson.

Mr. Hennessy: That will go in, then.

Mr. Andersen: I will offer at this time the statement of Professor Harold Chapman Brown, as defendant's exhibit next in order.

(The document was marked "Defendant's Exhibit Q.")

CLERK'S COPY.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1941~~ 1942

No. ~~321~~ 2

WILLIAM SCHNEIDERMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED JULY 26, 1941.

CERTIORARI GRANTED OCTOBER 13, 1941.

No. 9658

United States

Circuit Court of Appeals

For the Ninth Circuit.

WILLIAM SCHNEIDERMAN, also known as VELVEL SCHNEIDERMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Two Volumes

VOLUME II

Pages 477 to 904

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

(Testimony of William Schneiderman.)

DEFENDANT'S EXHIBIT "Q"

Examination of Harold Chapman Brown, taken from official report of proceedings before the Immigration and Naturalization Service of the Department of Labor, Docket No. 55973/217, in the Matter of Harry Bridges—Deportation hearing; Angel Island, San Francisco, California, August 15, 1939, August 16, 1939; Direct Examination commencing at page 4343 of said transcript:

HAROLD CHAPMAN BROWN

was called as a witness on behalf of the alien and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Miss King:

Q. Professor Brown, will you give your name and address for the record?

A. Harold Chapman Brown, 520 Alma Street, Palo Alto, California. Or a better address is Stanford University; I am moving tomorrow.

Q. How long have you been in California?

A. I came to California in 1914.

Q. And from where did you come?

A. Columbia.

Q. And what were you doing at Columbia?

A. Teaching, between Columbia and Barnhard College. The work is divided into two institutions; Barnhard is the woman's institution at Columbia.

[Note: All italics in this exhibit are by the author.]

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Where did you receive your own education?

A. Well, I took my A.B. at Williams, and my Master's and Ph.D. at Harvard. I was one year in Germany during the time I worked for my Ph.D.; the University of Berlin.

Q. Have you written any books or articles, Professor Brown?

A. Something over 50 articles, and somewhere around 90 reviews; many of them articles, commemorative volumes, things of that sort, essays on John Dewey, essays on Edward James, things of that sort.

Q. To what professional organizations do you belong?

A. The American Association of University Professors, the Federation of Teachers. You mean honorary societies too? [229]

Q. Yes.

A. The Phi Beta Kappa and Sigma Psi.

Q. Any philosophical organizations?

A. American Philosophical Association.

Q. What languages have you knowledge of?

A. A reading knowledge, I have Latin, Greek, French, German; I can read Italian with a dictionary and I can read Russian with a dictionary fairly well.

Q. Will you tell us something about your background, Professor Brown, your parentage?

A. I come from an old New England family. My ancestors came over, I think, somewhere in the 1600's. My mother knows the genealogy of the

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

family; I never did. Mostly lawyers, doctors, a few clergymen way back. My father was a lawyer, president of the Hammond County Bar Association; he went into my grandfather's office and married my grandfather's daughter. My grandfather married my great grandfather's daughter—he was supreme court justice in Massachusetts—and so for a generation or two back. I don't know how far back it goes. I married a lawyer's daughter.

Q. Now, coming to the matter at hand, what work have you done on Marx's theory?

A. Why, I became interested in Marx first—that is in my first page of my statement, some of that, by the way.

I became interested at first in Columbia, while a good many of the younger men were talking about the philosophy of history, the Marxist philosophy of history, when I was there as a young instructor; and I have always been interested in a materialistic point of view.

My writings have all been along the lines of philosophy science, a goodly part of it, at least, and that went along the lines of materialism.

In the American philosophy we developed a so-called "concept of levels"; it is technically what Marx means by "Dialetical materialism." There is a very close relationship, anyhow, to it. [230]

And I began to be told I was a Marxian, so I thought I had better read Marx and find out, and I found out that I was, as far as the nature of the philosophy

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

was concerned at that time. Then later in my career I had to teach social philosophy more fully, and I naturally went into the Marxian philosophy in connection with social philosophy. I have taught philosophy of history, things of that sort, and the Marxian philosophy of history is certainly one of the more intelligible of the philosophies of history. I have had to go into that quite fully in that connection, and in social philosophy later, in connection with social religious philosophy problems.

Q. Now, you mentioned before that, that on the first page of your statement something appeared. Have you prepared a statement on your conception of what Marxism is?

A. Yes, it is here. There are copies of it.

Mr. Shoemaker: Is this in order to qualify the Professor as an expert on Marxism?

Mr. Gladstein: Well, that qualification has taken place, Mr. Shoemaker.

Mr. Shoemaker: Is that all you are going to ask him?

Mr. Gladstein: Well, I think there are some other questions.

By Miss King: Q. Professor Brown, what are you teaching now at Stanford?

A. I change my courses every quarter; we change our courses every quarter. This particular quarter I am giving a course in the Introduction of Philosophy, and Advanced Ethics.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Are you the head of the Philosophy Department?

A. I am the head of the Philosophy Department, yes.

Q. How long have you been the head of the Philosophy Department?

A. I think about five years ago: I am not sure of the exact date.

Q. Do you feel that there is any further statement that you care to make, outside of your statement?

A. I don't know any particularly necessary to make, in any respect. I made some comment upon the [231] growing interest in Marxism in the universities, here in my opening statement in this opening page.

Q. Have you had any evidence of this growing interest in Marxism in the universities, outside of what appears in your paper?

A. Oh, yes, we have. There are theses coming up on Marxism all the time. We have two theses on the way in Stanford now, one that will finish probably this summer, on political science, on Marx: and we have one in the Philosophy Department which has just begun, on Marxism.

Q. Have you been——

A. (Interrupting) Or one aspect of it.

Q. Are those theses in your courses, or in other courses?

A. No; those theses have to be accepted by the graduate study committee of the university.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. I see.

A. All graduate students who propose theses have to submit a thesis topic to the graduate study committee, and the graduate study committee decides whether it is acceptable or not.

Q. Have you had any connection with the work on these theses?

A. I am directing one in the Philosophy Department, at the present time, on Marx, yes. Mr. Thompson is directing the other one, by the way.

Q. What books did you read, Professor Brown, in connection with your study of Marxism, either recently or——

A. (Interrupting) Well, I have been through the whole 15 volumes of Gesamtausgabe; that is an authorized edition of Marx. And I have been through most of the 21 volumes of Lenin, at one time or another.

Q. You have never taught anything in this field, have you?

A. I never have given a course in Marx specifically. Of course, in all philosophy of history Marx's philosophy of history is one of the important philosophies. There are three or four that are really worth considering; Marx is one of them.

Q. Have you written anything on this subject?

A. No, not directly.

Q. What do you mean by that?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. Well, I mean by that, this: I [232] have done some papers on the philosophy of mind, from a materialistic point of view, which I think would be closely in line with Marx's conception. It was not done with direct reference to Marx, because Marx and Engels were at a time when the developments of physiology were such that a materialistic statement of mind, public statement of the nature of mind, couldn't be made very clearly in those times. Since the development of the reflex concept of Rosanoff and certain physiological developments, animal drive and the learning processes, it is possible to give a good deal fuller statement than was possible—than would be possible for Engels or Marx or Lenin to give.

Q. Will you make the statement that you have prepared with reference to the philosophy of Marxism?

Mr. Shoemaker: Just a minute. Have you qualified the gentleman to your own satisfaction, so far?

Miss King: Yes.

Mr. Shoemaker: If your Honor please, we all admit that Marxism is a very interesting subject for anyone's study, but that is not the issue here. The issue we have here is entirely different. No showing has been made, or attempt has been made by defense counsel to show that the Communist Party teaches pure Marxism in any way; no showing that the particular organization here and

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

the Marxist theory are one and the same thing. Now, we don't dislike to hear the Professor on the question of Marxism. In fact, personally I would like to hear him; I expect to learn something. But after all, we are concerned with something more than that here, and it seems to me that defense counsel should attempt to show that the Professor has a knowledge not only of the theory of Communism but perhaps the practices of Communism, and if they don't do it with regard to the practices of Communism I expect to do it before the gentleman is qualified. [233]

Miss King: If your Honor pleases, there have been a number of exhibits introduced in evidence in this case—I don't know by number how many of those volumes—volumes of Marx and Lenin, a great number, and it seems to me that in view of those circumstances we are interested in the theory of Marxism, and that apparently at least some of the documents which the Communist Party is charged with distributing are volumes of Marx and volumes of Lenin. For that reason the philosophy of Marx and Lenin are matters, it seems to me, not only of interest but immediately relevant to these proceedings. Now, what other issues there are in the case, it seems to me, is immaterial at this moment. That a person who has the knowledge, who has done the study on Marx that Professor Brown has done, and is a scholar in that subject—it seems to me what he has to say as to the theories of Marx

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

and Leninism in regard to the issues in this case, if for no other reason than because of the documents that have been introduced, that is material and a summary of those teachings is important and should be presented.

Mr. Grossman: There is something else I would like to add: Regardless of how the Government may or may not have proceeded in certain cases, so far as presenting a small or a large amount of Marx's theories for the consideration of the Examiner, and the Labor Department, and, perhaps, the courts, nevertheless the fact remains that the theory of Marxism is not a simple thing that can be determined from one sentence out of any of these pamphlets. The theory of Marxism, as will appear very shortly from the testimony of these professors, is a complicated and extended discussion.

It certainly comes ill from the Government, to one who presumably is interested in having this case decided, not upon a few chosen sentences, but upon the entire theory of Marxism, to contend that the evidence must be limited to the limited, [234] perhaps representative, perhaps unrepresentative, portions that have been chosen out of well-chosen, let us say, pamphlets. If the Government had made any attempt, or even purported to introduce documents which would give an all-sided view of Marxian, then it might well be contended that if they had done this and identified them properly that

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

we had no basis for putting on anyone who couldn't properly identify these documents as connected with the Communist Party. But since this hasn't been done it comes ill from the Government to object that in supplementing, in adding those things that were for some reason left out in the presentation, in making a fuller presentation merely of the doctrines, that something irrelevant is being done, or that a person incompetent is being qualified. Certainly no one could look at the documents introduced and say they purport, whether in the theory of the Government case or ours, represent anything but the Marxian theory. Certainly no one could look at those and claim they don't require other documents, or other books for explanation and don't require interpretation. That isn't true. We cannot start the theoretical part of the case on the theory that such a question as this can be decided on the basis of chosen passages from a few pamphlets and the sooner we get that cleared up the better. Marxism is a subject which has not yet been fully presented to this tribunal and the theory upon which I think the testimony of the two professors should be considered is that they are presenting relevant aspects, a discussion or a statement of relevant aspects of the Marxian theory which has not yet been presented. An all-sided discussion of that theory must be had before anyone is in a position to judge the Marxian theory.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Mr. Shoemaker: Let me say, in answer to that, this: As I recall it, the professors were called here before those books were introduced. Whether they were or whether they were not, I am concerned with trying to get the record as small as possible. [235]

Going back to some of the suggestions made by defense counsel: I am not afraid to hear the professors for one minute. If they are not qualified now in their knowledge of what we think is the issue in this case, we shall attempt to qualify the gentlemen later. In other words, we are not accepting, because defense counsel say so, that the gentlemen are qualified in Marxism pure and simple and that is the issue in this case; and neither are we at this time, nor later, restricted to those publications which have already been put into evidence here as Government exhibits in so far as showing that the Communist Party is a subversive organization. We expect to show that and we expect to introduce still further evidence, if I feel it necessary, and I feel that we have the right to at any time introduce that.

Now, going back to the question of the professor's knowledge of pure Marxism. As Mr. Bonham told you some time ago, he wasn't concerned particularly with theories of Communism, neither are we concerned particularly with the theories of Marxism. We are concerned with the methods of

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

carrying the theories of Marxism into effect. The theories of Marxism are only a small part of something out of which something else evolves and which remains today and is today in American life, and we expect to show that, and emphatically, beyond a peradventure of a doubt that it is a subversive organization.

Trial Examiner Landis: The issue in this case, of course, is whether or not the Communist Party advocates the overthrow of the Government of the United States by force and violence, or whether the Communist Party has an organization which distributes pamphlets which teach, advise or advocate the overthrow of the Government of the United States by force and violence. The Communist Party may distribute a number of books, some of which do not advocate the overthrow of the Government of the United States by force [236] and violence, but some of which may. The fact that it distributes one of those books seems to me sufficient in law to sustain the charge embodied in the warrant. But whether or not the Communist Party advocates the overthrow of the Government of the United States by force and violence is a matter of the examination of Communist doctrines as embodied in the official documents, some of them which have been produced and made a part of this record already. The problem of interpretation in large measure of that doctrine is the evidence that the

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

doctrine of the Communist Party is a thing that didn't come into existence all of a sudden in 1939, or 1924; but stems from earlier sources, the most important of which was Marx.

To understand the Communist doctrine and to understand the import of the language contained in things like the Communist Manifesto, in such preambles as are contained in the constitution of the Communist Party, to understand the import of that language one has to look at it from two standpoints: One, the intention of the writers of the language, as well as the effect of that language on minds of ordinary human intelligence. Both sides seem to be valid.

In order to get an understanding of the intention of that type of language it seems to me that a study of some understanding of Marxism is superficially essential. I do not say it is essential in the final analysis, but I think that a preliminary case for a grasp of Marx' theories is there.

As to your point that the issue is only the practice of the Communist Party, I do not think that is the only issue in this case. I think it is an issue in this case. But the language of the statute under which this warrant was sued out goes to the doctrine as well as to practice and advocacy. I think that this proffered testimony is not irrelevant so I overrule the objection of the Government. [237] We will take a short recess.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Landis: You may proceed.

By Miss King: Q. Professor Brown, have you prepared a statement on Marxism and its doctrines and theories? A. I have.

Q. Will you read it, please?

A. Before reading this I would like to say that I think it will save time better in the long run if you will allow me to read very continuously. I will be glad to answer questions any time that you want to interrupt.

Trial Examiner Landis: Counsel may.

Mr. Shoemaker: I shan't offer any objection if you think you can save time.

The Witness: I will omit the second paragraph of the statement because it has already been covered, I think.

Trial Examiner Landis: Anything that should go into the record you had better read.

The Witness: I will read the whole thing.

Preface

This statement which I am to make under subpoena concerns the content and significance of Marxist philosophy. It is not to be taken as a statement of my own views on any of the points in question. I have endeavored to treat the subject as objectively as I should the philosophies of Plato,

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

St. Thomas Aquinas, or Emmanuel Kant, if there were need of an exposition of their views. It differs from a classroom presentation only in that it is limited to exposition and does not include critical evaluation.

My interest in Marxism goes back to my Columbia days before 1914, where I taught for seven years after taking my Ph.D. at Harvard. The materialist interpretation of history was then a topic of lively interest among the historians and economists with whom I was thrown in contact. My own work in the Philosophy of science led me to study the background of Marxism, and in social philosophy, to [238] complete the picture. I have never given a course exclusively devoted to Marxian philosophy but I discussed relevant aspects of this philosophy in connection with the philosophy of science, of language, of history, and of ethics. Academic philosophers have been somewhat tardy in giving recognition to the high quality of Marx-Engels thought, as they were in recognizing Nietzsche, but our textbooks are now giving increased space to it; Professor Hocking of Harvard has given courses in Marxism, Columbia has had a course on Philosophy in the U S S R (Marxism), and a seminar on Marx-Engels has been given at the University of California. There is also a Marxist Quarterly of high character, Science and Society, published in New York.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Marxist Philosophy

Introduction: The Philosophy of Marx-Engels is known as Dialectical Materialism. The standard edition of their writings is the Marx-Engels Gesamtausgabe, published in Berlin under the auspices of the Marx-Lenin Institute of Moscow, 1932, an edition comprising 15 volumes of something over 600 pages each. There is no complete English translation but the principle writings have been done into English and I have made use of English editions wherever possible.

The collaboration of these men was so close that it is impossible to separate their thought. Of Marx, Engels wrote (Feuerbach, 1888, footnote pp. 52-53),

> "I cannot deny that both before and during my 40 years collaboration with Marx I had a certain independent share in laying the foundations, and more particularly in elaborating the theory. But the greater part of its leading basic principles, particularly in the realm of economics and history, and above all its final clear formulation, belongs to Marx. * * * What Marx accomplished I would not have achieved. Marx stood higher, saw further, and took a wider and quicker view than all the rest of us. We others were at best talented; Marx was a genius." [239]

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Such close collaboration and generous recognition of the greater by the lesser man is almost unique in history. For smooth reading I shall not read the quotations marks. They are shown in the manuscript. Engels writes of their philosophy (Letter 203, to Florence Kelly Wischnewetsky):

> "Our theory is a theory of evolution, not a dogma to be learned by heart and repeated mechanically."

Nevertheless, it is so closely integrated that it is impossible to interpret any part of it except in the light of the whole. Hence, although this hearing is primarily concerned with the Marx-Engels conception of the nature and process of revolution, the conception of the class struggle, and the role of force or violence, I find it impossible to discuss these matters without a preliminary account of their conception of materialism, the meaning of dialectic, and of their philosophy of history, of which these doctrines are integral parts. I will try to make this discussion as brief as possible.

Materialism: The 11th thesis on Feuerbach reads:

> "The philosophers have only *interpreted* the world in different ways: the point, however, is to *change* it." (Jackson, Dialectics, p. 31.)

Now, if anything is to be changed, it is obviously necessary to know the character of the thing, the

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

processes that can be utilized, and the directions of change that are possible. For the Marxian materialist, there is no unknowable, but merely an unknown; the scientific method is the only method for seeking knowledge and no limits can be set a priori to the possibilities of scientific achievement.

> "Those who asserted the primacy of the spirit to nature * * * comprise the camp of the idealists. The others who regard nature as primary, belong to the various schools of materialism." (Marx, Selected Works, English Edition, Volume I, pp. 430-431.) [240]

For the latter, "the material sensuously perceptible world to which we ourselves belong is the only reality * * * Matter is not a product of mind, but mind itself is merely the highest product of matter." (Idem., p. 435.) "It is impossible to separate thought from matter that thinks. Matter is the subject of all changes." It follows that

> "the subject of natural science is moving matter, bodies. Bodies cannot be separated from motion, their form and kinds can only be known through motion, of bodies apart from motion, apart from any relation to other bodies, nothing can be asserted. Natural science, therefore, knows bodies by considering them in their relation to one another, in motion * * * The investigation of these different forms of motion

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

is, therefore, the chief subject of natural science." (Letter 158, Engels to Marx, 1873.)

As to mind, it is true that "men are the producers of their conceptions," (Feuerbach, p. 14) but,

> "these forms (of being) can never be created and derived by thought out of itself, but only from the external world * * * the principles are not the starting point of the investigation, but its final result; they are not applied to Nature and human history, but abstracted from them; it is not Nature and the realm of humanity which conforms to these principles, but the principles are only valid in so far as they are in conformity with Nature and History." (Anti-Duhring, P. 44)

This explanation of materialism should be especially noted for Marx and Engels are consistent and it is in this way that their assertions about the laws of social evolution and all their social conceptions should be understood. It is really a negation of traditional metaphysics.

> "If we deduce the world schematism not from our minds, but only *through* our minds from the real world, deducing the basic principles of being from what it is, we need no philosophy for this purpose, but positive knowledge of the world and of what happens in it." (Anti-Duhring, p. 45.) [241]

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Even in the case of pure mathematics it is not true that

> "the mind deals only with its own creations and imaginations. The concepts of number and form have not been derived from any source other than the world of reality. The ten fingers on which men learnt to count * * * may be anything else but they are not the free creation of the mind." (Idem., p. 47.) "But, as in every other department of thought, at a certain stage of development the laws, abstracted from the real world become divorced from the real world, and are set over against it as something independent, as law coming from outside, to which the world has to conform * * * in this way and not otherwise, *pure* mathematics is subsequently *applied* to the world, although it is borrowed from this same world and only represents one section of its forms of connection—and it is just precisely because of this that it can be applied at all." (Idem., p. 48.)

Furthermore, a concept cannot "directly coincide with reality, from which it must first be abstracted," but, "it is still something more than a fiction, unless you are going to declare all the results of thought fictions because reality has to go a long way around before it corresponds to them, and even then corresponds to them with asymptotic approximation

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

* * *" "From the moment we accept the theory of evolution all our concepts of organic life correspond only approximately with reality. * * * In 1843, I saw the eggs of the duck-bill in Manchester and with arrogant narrow-mindedness mocked at such stupidity as if a mammal could lay eggs—and now it has been proved! So don't behave * * * in the way I had later to beg the duck-bill's pardon for!" (Letter 232, Engels to Schmidt, March, '95.)

As to method,

> ". . . it was resolved to comprehend the real world-nature and history—just as it presents itself to everyone who approaches it free from preconceived idealist fancies. It was decided relentlessly to sacrifice every idealist fancy which could not [242] be brought into harmony with the facts conceived in their own and not in a fantastic connection. And materialism means nothing more than this." (Engels, Feuerbach, p. 53.)
>
> "As to the realms of ideology which soar still higher in the air, religion, philosophy, etc., these have a prehistoric stock, found already in existence and taken over in the historic period of what we should today call bunk." (Letter 214, Engels to Schmidt, October, '90.)

In summary, whereas, "By the word materialism, the philistine understand gluttony, drunkenness,

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

lust of the eye, lust of the flesh, arrogance, cupidity, avarice, swindling—in short, all the filthy vices in which he himself indulges in private," and, "by the word Idealism, he understands the belief in virtue, universal philanthropy and in a general way 'a better world' of which he boasts before others, but in which he himself at the utmost believes not so long as he is going through the depression or bankruptcy consequent upon his customary 'materialist' excesses;" (Engels, Feuerbach, pp. 41-42;) in contrast, Marx and Engels see in Idealism illusion and the paralysis of action, and in Materialism, careful scientific analysis as an effective instrument in man's struggles to attain a better life.

Dialectic: The word dialectic is an inheritance from the philosophy of the Greeks. It represents a method of arriving at truth by exposing the contradictions in an argument and overcoming them by reinterpretation of the data. In the 19th Century it attained wide circulation through the philosophy of Hegel, which had been raised by the Prussian monarchy to the estate of an official philosophy, and the term had also attained a new meaning, since the idealist Hegel had conceived reality as an Absolute Idea whose temporal development took place through an inner dialectic of logic, a movement of thesis, antithesis and synthesis. [243] The term came to Marx through his studies of Hegel and his

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

association with the younger Hegelians who were passing from battles of ideas into the world of practical politics. He seems to have taken it over partly for the sake of being understood and partly from recognition of a kernal of truth in the conception. Of it he says:

> "My dialectic method is not only different from the Hegelian, but is its direct opposite. To Hegel, the life-process of the human brain, i.e., the process of thinking, which under the name of 'the Idea' he even transforms into an independent subject, is the demiurges of the real world, and the real world is only the external, phenomenal form of the 'Idea.' With me, on the contrary, the ideal is nothing else than the material world reflected by the human mind, and translated into forms of thought." (Capital, Author's Preface to the Second Edition, p. 25.)

In consequence the dialectic must come to reflect the nature of process in the material and social world. Change becomes the most universal characteristic of reality.

> "All nature," says Engels, "from the smallest thing to the biggest, from a grain of sand to the sun, from the protista to man, is in a constant state of coming into being and going out of being, in a constant flux, in a ceaseless state

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

of movement and change." (Engels, Dialectic of Nature). So the important aspects of nature and society are "what is arising and developing, and not what is apparently stable but is really already beginning to pass away."

As a second point, Dialectics insists on the integral connection of all things in nature and their organic interdependence so that no thing or event can be understood in isolation. A recent British Marxian (H. Levy, Philosophy for a Modern Man) illustrates this amusingly by a picture of a running hiker, an isolate, whose hurry can only be understood by a contextual completion of the picture that shows the bull chasing him. [244]

Thirdly, "Nature is the test of Dialectics," (Engels, Anti-Duhring) and nature exhibits the process of development not as a growth or uniform change but as a process in which quantitative changes reach critical points and pass over into qualitative changes by rather sudden mutations.

"In physics * * * every change is a passing of quantity into quality * * * For example, the temperature of water has at first no effect on its liquid state; but as the temperature of liquid water rises or falls, a moment arrives when this state of cohesion changes and the water is converted in one case into steam and in the other into ice * * * A definite minimum current is required to make a platinum wire

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

glow; every metal has its melting point, etc."
(Engels, Dialectic of Nature.)

In the Anti-Duhring, Darwin is credited with proving this to be the process of developments of plants and animals. This point should be kept in mind, for we shall find it is such qualitative changes occurring in the development of a society that constitute a revolution.

As a final point, the development of all things is the resultant of conflicting forces within them, and not a harmonious unfolding. Lenin refers with approval to Heraclitus, an early Greek philosopher, who conceived the struggle of opposites as the truly creative process of nature and he himself uses this formula. (Selected Works, XI, pp. 81-82.) It is easy to anticipate the significance this principle will have when attention is turned to the history of society.

These special points of the dialectic method are the key to the development of the philosophy of history, for in human society we have occurrent and ever-changing events not to be understood in isolation, developing conflicting forces amongst and within themselves and critical points of change from which a qualitatively [245] different organization of society results. But the application of the dialectic is not simple.

Engels writes Conrad Schmidt (Letter 212, August 5, '90):

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"* * * the materialistic conception of history also has a lot of friends nowadays to whom it serves as an excuse for not studying history. Just as Marx used to say about the French 'Marxists' of the late 'seventies': 'All I know is that I am not a Marxist.' In general the word 'materialistic' serves many of the younger writers in Germany as a mere phrase with which anything and everything is labelled without further study; they stick on this label and then think the question disposed of. But our conception of history is above all a guide to study * * * All history must be studied afresh, the conditions of existence of the different formations of society must be individually examined before the attempt is made to deduce from them the political, civil-legal, aesthetic, philosophical, religious, etc., notions corresponding to them * * * only too many of the younger Germans simply make use of the phrase, historical materialism (and *everything* can be turned into a phrase) in order to get their own relatively scanty historical knowledge (for economic history is still in its cradle!) fitted together into a neat system as quickly as possible, and they then think themselves something very tremendous."

The Philosophy of History: In his funeral oration at the grave of Marx (March 17, 1883) Engels

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

pays the following tribute to his lifelong collaborator:

> "Just as Darwin discovered the law of evolution in organic nature, so Marx discovered the law of evolution in human history. He discovered the simple fact (heretofore hidden beneath ideological excrescences) that human beings must have food and drink, clothing and shelter, first of all, before they can interest themselves in politics, science, art, religion, and the like. This implies that the production of the immediately requisite material [246] means of subsistence, and therewith the extant economic developmental phase of a nation or an epoch, constitute the foundation upon which the State institutions, the legal outlooks, the artistic and even the religious ideas, of those concerned, have been built up. It implies that these latter must be explained out of the former, whereas usually the former have been explained as issuing from the latter."
>
> "Relics of bygone instruments of labor possess the same importance for the investigation of extinct economical forms of society, as do fossil bones for the determination of extinct species of animals. It is not the articles made, but how they are made, and by what instruments, that enables us to distinguish different economical epochs. Instruments of labor not

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

only supply a standard of the degree of development to which human labor has attained, but they are also indicators of the social conditions under which that labor is carried on." (Capital, p. 200.)

"Of the elements handed down to a later age from an earlier, what appears accidental to the later age as opposed to the earlier, is a form of intercourse which corresponded to a less developed state of productive forces." (Feuerbach, pp. 70-71.)

In history, Marx and Engels find five types of relation to production:

1. A primitive communal in which, while men own their own instruments of production and defense—bows, arrows, fishnets, etc., they more or less work together or at least no man lives off the labor of other men who are obliged to work for him to maintain themselves.

2. Slave, where there has arisen a class of owners who possess both the instrumentalities of production and the workers with whom they can do as they please.

3. In feudalism, the peasant and handicraftsman own their own [247] tools of production but have not access to the natural resources necessary for their use, so they pass to the semi-ownership of the feudal lord who prefers their bondage to slavery

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

since the slave has no incentive to work and no initiative, whereas the serf must work to retain such privileges as he has.

> "The hand mill gives you society with the feudal lord; the steam mill society with the industrial capitalist." (The Poverty of Philosophy, English Edition, p. 92.)

4. In capitalist society, the ownership of instrumentalities of production have become capitalist property and the workers are obliged to sell their labor power in order to live.

> "In imagination, individuals seem freer under the dominance of the bourgeoisie (Capitalists) than before, because their condition of life seems accidental; in reality, of course, they are less free, because they are more subject to the violence of things." (German Ideology, p. 77.) And beyond this:

5. Is the socialist stage, in which the instrumentalities of production are collectively owned and the fruits of production belong to those who actively produce them.

> "It is superfluous to add that men are not free to choose their *productive* forces—which are the basis of all their history—for every productive force is an acquired force, the product of former activity.
>
> "The productive forces are therefore the result of practical human energy; but this energy

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

is itself conditioned by the circumstances in which men find themselves, by the productive forces already won, by the social form which exists before they do, which they do not create, which is the product of the former generation * * *

"Are men free to choose this or that form of society for themselves? By no means. Assume a particular state of development in production, commerce and consumption, and you will have a corresponding social order, a corresponding organization of the family and [248] out of the ranks and classes, in a word, a corresponding civil society." (Civil society—any form of society based on division of labor.) (Selected correspondence, Marx to Annenkov, Letter 2, December 28, 1846, p. 7.)

"The institution and privileges of guilds and corporations, the regulatory regime of the Middle Ages, were social relations corresponding only to the acquired productive forces and to the social condition which had previously existed and from which these institutions had arisen. Under the protection of this regime of corporations and regulations capital was accumulated, overseas trade was developed, colonies were founded. But the fruits of this would themselves have been forfeited if men had tried to retain the forms under whose shelter these

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

fruits had ripened. Hence, came two thunderclaps—the revolutions of 1640 and 1688. (In England.) All the old economic forms, the social relations corresponding to them, the political conditions which were the official expression of the old civil society, were destroyed in England." (Letter 2, p. 8.)

Of a later time,

"one can say that up to the year 1825—the period of the first general crisis—the general demands of consumption increased more rapidly than production, and the development of machinery was a necessary consequence of the needs of the market. Since 1825, the invention and application of machinery has been simply the result of war between workers and employers." (Letter 2, p. 10.)

"They, the bourgeoisie, all tell you that in principle, that is as abstract ideas, the competition, monopoly, etc., are the only basis of life, but that in practice they leave much to be desired. They all want competition without its tragic effects. They all want the impossible, namely, the conditions of bourgeois existence without the necessary consequences of these conditions. None of them understands that the bourgeois form of production is historic [249] and transitory, just as the feudal form was. This mistake arises from the fact that the bour-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

geois man is to them the only possible basis of every society; they cannot imagine a society in which men have ceased to be bourgeois." (Letter 2, p. 15.)

"Upon the different forms of property, upon the social conditions of existence, as foundation, there is built a superstructure of diversified and characteristic sentiments, illusions, habits of thought, and outlooks on life in general. The class as a whole creates and shapes them out of its material foundation, and out of the corresponding social relationship. The individual in whom they arise through tradition and education may fancy them to be true determinants, the real origin of his activities." (18th Brumaire, p. 55.)

"Morality, religion, metaphysics, all the rest of ideology and their corresponding forms of consciousness, thus no longer retain the semblance of independence. They have no history, no development; but men, developing their material production and their material intercourse alter, along with this their real existence, their thinking and the products of their thinking. Life is not determined by consciousness, but consciousness by life." (Feuerbach, pp. 14-15.)

"I consider the ultimate supremacy of economic development established in these spheres too, but it comes to pass within conditions im-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

posed by the particular sphere itself; in philosophy, for instance, through the operation of economic influences (which again generally only act under political, etc., disguises) upon the existing philosophic material handed down by predecessors. Here economy creates nothing absolutely new (a novo), but it determines the way in which the existing material of thought is altered and further developed, and that too for the most part indirectly, for it is the political legal and moral reflexes which exercise the greatest direct influence upon philosophy." (Letter 214, [250] Engels to Conrad Schmidt, October 27, '90.)

Marx himself has given a magnificently condensed summary of the whole philosophy of history in the preface to the Critique of Political Economy, 1859:

"I was led by my studies to the conclusion that legal relations as well as forms of state could neither be understood by themselves, nor explained by the so-called general progress of the human mind, but that they are rooted in the material conditions of life, which are summed up by Hegel after the fashion of the English and French of the eighteenth century under the name 'civic society'; the anatomy of that civic society is to be sought in political economy.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"In the social production which men carry on, they enter into definite relations that are indispensable and independent of their will; these relations of production correspond to a definite stage of development of their material powers of production. The sum total of these relations of production constitutes the economic structure of society—the real foundation, on which rise legal and political superstructures and to which correspond definite forms of social consciousness. The mode of production in material life determines the general character of the social, political, and spiritual processes of life.

"It is not the consciousness of men that determines their existence, but on the contrary, their social existence determines their consciousness.

"At a certain stage of their development, the material forces of production in society come in conflict with the existing relations of production, or—with the property relations within which they had been at work before. From forms of development of the forces of production these relations turn into their fetters. Then comes the period of social revolution. With the change of the economic foundation the entire immense superstructure is more or [251] less rapidly transformed.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"In considering such transformations the distinction should always be made between the material transformation of the economic conditions of production which can be determined with the precision of natural science, and the legal, political, religious, aesthetic, or philosophic—in short, ideological forms in which men become conscious of this conflict and fight it out. Just as our opinion of an individual is not based on what he thinks of himself, so can we not judge of such a period of transformation by its own consciousness; on the contrary, this consciousness must rather be explained from the contradictions of material life, from the existing conflict between the social forces of production and the relations of production. No social order ever disappears before all the productive forces, for which there is room in it, have been developed; the new higher relations of production never appear before the material conditions of their existence have matured in the womb of an old society. Therefore, mankind always takes up only such problems as it can solve; since, looking at the matter more closely, we will always find that the problem itself arises only when the material conditions necessary for its solution already exist or are at least in the process of formation.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"The bourgeois relations of production are the last antagonistic form of the social process of production—antagonistic not in the sense of individual antagonism, but of one arising from conditions surrounding the life of individuals in society; at the same time the productive forces developing in the womb of bourgeois society create the material conditions for the solution of that antagonism." (Pp. 11-14.)

Engels makes the following comment on this in a letter to J. Block (Letter 213, September 21, '90): [252]

"According to the materialistic conception of history the determining element in history is *ultimately* the production and reproduction in real life. More than this neither Marx nor I have ever asserted. If therefore, somebody twists this into the statement that the economic element is the only one, he transforms it into a meaningless, abstract and absurd phrase. The economic situation is the basis, but the various elements of the superstructure—political forms of the class struggle and its consequences, constitutions established by the victorious class after a successful battle, etc., forms of law, and then even the reflexes of all these actual struggles in the brains of the combatants; political, legal, philosophical theories, religious ideas and

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

their further development into systems of dogma—also exercise their influence upon the course of the historical struggles and in many cases preponderate in determining their *form*. There is an interaction of all these elements, in which, amid all the endless *host* of accidents (i.e., of things and events, whose inner connection is so remote or so impossible to prove that we regard it as absent and can neglect it,) the economic movement finally asserts itself as necessary. Otherwise the application of the theory to any period of history one chose would be easier than the solution of a simple equation of the first degree . . .

"Marx and I are ourselves partly to blame for the fact that younger writers sometimes lay more stress on the economic side than is due to it. We had to emphasize this main principle in opposition to our adversaries, who denied it . . .

"Unfortunately, however, it happens only too often that people think they have fully mastered a theory and can apply it without more ado from the moment they have mastered its main principles, and even those not always correctly. And I cannot exempt many of the more recent 'marxists' from this reproach, for the most wonderful rubbish has been produced from this quarter too." [253]

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

The Philosophy of History in Action.

Since every state of society is "historic and transitory," it is the tensions of forces within it that determine the direction of change at any moment. These tensions become articulate as class struggles where classes may be defined as

> "large groups of people which differ from each other by the place they occupy in a historically definite system of social production, by their relation (in most cases fixed and formulated in laws) to the means of production, by their relation in the social organization of labor, and, consequently by the dimensions and method of acquiring the share of social wealth that they obtain." (Lenin, Selected Works, Volume IX, pp. 432-433.)

> "So extensive are the differences between the material, the economic conditions of the class war in classical and modern times, that the political incidents born out of the struggle in one epoch and the other can have no more resemblance to one another than the Archbishop of Canterbury has to the High Priest Samuel." (18th Brumaire, p. 19.)

> "Marx," writes Engels, "was the first to discover the great law which governs the march of history. According to this law, all historical struggles, although they seem to take place on the political, religious, philosophical, or any

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

other ideal plane, are, in reality, nothing else than the more or iess clear expression of struggles between social classes. The existence of these classes and their collisions, are themselves determined by the degree of development in the economic situation, by the prevailing mode of production, and by the methods of exchange which result. This law bears the same relationship to history as the law of the conservation of energy bears toward the physical sciences." (In the preface to the third German Edition of the 18th Brumaire, p. 22.)

The theoretical analysis of the operation of capitalism is given in KAPITAL (Three volumes, '67, '85, '94—the last two [254] posthumous.) Both Marx and Engels are prolific in analyses of historic processes of their day; Marx in the Rheinische Zeitung, the Neue Rheinische Zeitung, Contributions to the New York Tribune, (1852) his study of the 18th Brumaire, and Engels in his studies of the class war and revolution in France made careful and penetrating studies of these processes. The American Civil War was also an important object of study to them. I think I can best exposit this phase of their thought from the Communist Manifesto of 1848, which is the great classic of the movement, but it must be kept in mind that this document was written for a certain group, under certain conditions. It is not a gospel but a program.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

In his introduction to the English edition of 1858, Engels tells us that the Manifesto, a joint production, was first "published as the platform of the Communists League, a workingmen's association, first exclusively German, later on international, and under the political conditions of the Continent before 1848, unavoidably a secret society," (page 3,) and as definition of the word communist, he explains, "whatever portion of the working class had become convinced of the insufficiency of mere political revolutions, and had proclaimed the necessity of a total social change, called itself 'communist.'" (Page 5.) It takes its stand on the Marxian philosophy of history:

> "The whole history of mankind * * * has been a history of class struggles, contests between exploiting and exploited, ruling and oppressed classes; that the history of these class struggles form a series of revolutions in which, nowadays, a state has been reached where the exploited and oppressed class—the proletariat—cannot attain its emancipation from the sway of the exploiting and ruling class—the bourgeoisie—without at the same time, and once and for all, emancipating society at large from all exploitation, oppression, class distinctions and class struggles." [255]

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

In the preface to the German edition of 1872, Engels comments:

> "However much the state of things may have altered during the last 25 years, the general principles laid down in this Manifesto are, on the whole, as correct today as ever. Here and there some detail might be improved. The practical application of the principles will depend, as the Manifesto itself states, everywhere and at all times, on the historical conditions for the time being existing * * * But then, the Manifesto has become a historical document which we have no longer any right to alter."

As to the document itself: The introduction opens with an ironical note:

> "A spectre is haunting Europe, the spectre of Communism." "All the posers of old Europe have entered into a holy alliance to exorcise this spectre: Pope and Czar, Metternich and Guizot, French radicals, and German police spies."

Hence, Communism is already acknowledged by all European powers to be itself a "power" and "it is high time that Communists should openly, in the face of the whole world, publish their views, their aims, their tendencies, and meet this nursery tale of the spectre of Communism with a manifesto of the party itself."

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Part I discusses the relation of bourgeois and proletarians. It opens with a recapitulation of the philosophy of history culminating in the following picture of the present (1848):

"Our epoch has simplified the class antagonisms. Society as a whole is more and more splitting up into two great hostile camps—bourgeois and proletariat."

"The bourgeoisie cannot exist without constantly revolutionising the instruments of production, and thereby the relations of production, and with them the whole relations of society." (P. 12.)

"The need of a constantly expanding market for its products chases the bourgeoisie over the whole surface of the globe." (P. 12.) [256]

"The cheap prices of its commodities are the heavy artillery with which it batters down all Chinese walls. It compels all nations, on pain of extinction, to adopt the bourgeois mode of production; it compels them to introduce what it calls civilization into their midst * * * In a word, it creates a world after its own image." (P. 13.) "(It) has subjected the country to the rule of the towns. It has created enormous cities, has greatly increased the urban population as compared to the rural . . ." (P. 13.)

"It has conjured up such a gigantic means of production and of exchange (that it) is like the sorcerer who is no longer able to control

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

the powers of the nether world whom he has called up by his spells." (P. 15.) "This is manifest in the revolt of modern productive forces against modern conditions of production, against the property relations that are the conditions of the bourgeoisie and its rule." (P. 14.)

Hence, crises and overproduction.

"The productive forces at the disposal of society no longer tend to further the development of the conditions of bourgeois property." (P. 15.)

Also the modern working class has been called into existence.

"These laborers, who must sell themselves piecemeal are a commodity, like every other article of commerce, and are consequently exposed to all the vicissitudes of competition, to all the fluctuations of the market."

Organized as an industrial army, it becomes the proletariat. Lower strata of middle class pushed down to the same level through inability to compete. Gradually they learn the value of union.

As conflict grows

"a small section of the ruling class cuts itself adrift and joins the revolutionary class . . . Just as, at an earlier period, a section of the nobility went over to the bourgeoisie." (P. 19.)

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"The lower middle class, the small manufacturer, the shopkeeper, the artisan, the peasant, all these fight against the bourgeoisie, [257] to save from extinction their existence as fractions of the middle class. They are, therefore, not revolutionary, but conservative. Nay, more they are reactionary, for they will try to roll back the wheel of history." (P. 19.)

"The 'dangerous class,' the social scum, that passively rotting mass thrown off by the lowest layers of the old society may, here and there, be swept into the movement by the proletariat revolution; its conditions of life, however, prepare it far more for the part of a bribed tool of reactionary intrigue." (P. 20.)

"All previous historical movements were movements of minorities, or in the interest of minorities. The (new) proletarian movement is the self-conscious, independent movement of the immense majority, in the interests of the immense majority . . . In form, the struggle of the proletariat with the bourgeoisie is at first a national struggle. The proletariat of each country must, of course, first of all, settle matters with its own bourgeoisie." (P. 20.) As conditions of labor worsen, "it becomes evident that the bourgeoisie is unfit any longer to be the ruling class in society . . . It is unfit to rule because it is incompetent to assure an existence to its slave within his slavery, because it can-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

not help letting him sink into such a state, that it has to feed him, instead of being fed by him." (P. 21.)

Part II discusses the relation of Communists to proletarians:

"The Communists do not form a separate party opposed to the working class parties . . . They have no interests separate and apart from those of the working class as a whole . . . They do not set up any sectarian principles of their own, by which to shape and mould the proletarian movement." (P. 22) "Communists are distinguished from other working class parties by this only:

(1) In the national struggles of the proletarians of the different countries, they point out and bring to the front the [258] common interests of the proletariat, independently of all nationality.

(2) In the various stages of development which the struggle of the working class has to pass through, they always and everywhere represent the interest of the movement as a whole . . . (They have the) advantage of clearly understanding the line of march, the conditions, and the ultimate general results of the proletarian movement." (P. 22.)

"The immediate aim of the Communists is the same as that of all the other proletarian

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

parties; formation of the proletariat into a class, overthrow of the bourgeois supremacy, conquest of political power by the proletariat." (P. 22.)

"The theoretical conclusions of the Communists . . . merely express, in general terms, the actual relations springing from an existing class struggle from a historical movement going on under our eyes." (P. 23.)

"The distinguishing feature of Communism is not the abolition of property generally, but the abolition of bourgeois property." (French Revolution abolished feudal property.) This has nothing to do with personal property.

"The first step in the revolution by the working class, is to raise the proletariat to the position of ruling class, to establish democracy. The proletariat will use its political supremacy to wrest, by degrees, all capital from the bourgeoisie, to centralize all instruments of production in the hands of the state, i.e., of the proletariat organized as the ruling class, and to increase the total productive forces as rapidly as possible." (P. 30.)

"Of course, in the beginning, this cannot be effected except by means of despotic inroads on the rights of property, and on the conditions of bourgeois productions; by means of measures, therefore, which appear economically

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

insufficient and untenable, [259] but which, in the course of the movement, outstrip themselves, necessitate further inroads upon the old social order, and are unavoidable as a means of entirely revolutionizing the mode of production.

"These measures will, of course, be different in different countries * * * In attaining supremacy the proletariat will have swept away the conditions for the existence of class antagonisms, and will thereby have abolished its own supremacy as a class." (P. 31) "There is left an association, in which the free development of each is the condition for the free development of all."

Part III can be omitted as it deals only with the relation of Socialist and Communist literature of the period; and Part IV very briefly discusses the position of the Communists in relation to various existing opposition parties, but a few points should be quoted since they represent, I believe, certain permanent policies.

"The Communists fight for the attainment of the immediate aims, for the enforcement of momentary interests of the working class; but in the movement of the present, they also represent and take care of the future of the movement." (There follows a statement of differ-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

ences of alliances in France, Switzerland, Poland and Germany).

"In all these movements, they bring to the front, as the leading question in each case, the property question, no matter what its degree of development at the time * * * Finally, they labor everywhere for the union and agreement of the democratic parties of all countries.

"The Communists disdain to conceal their views and aims. They openly declare that their ends can be obtained only by the forcible overthrow of all existing social conditions." (P. 44.)

"Let the ruling classes tremble at a Communist revolution. The proletarians have nothing to lose but their chains. They have a world to win. Workingmen of all countries, Unite." (P. 44.) [260]

Special Considerations of the Philosophy of Revolution:

"Long before me," Marx writes, (Letter to Weydemeyer, March 5, '52) "bourgeois historians had described the historical development of this class struggle and bourgeois economists, the economic anatomy of the classes. What I did that was new was to prove:

(1) that the existence of classes is only bound up with particular historic phases in

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

the development of production; (2) that the class struggle necessarily leads to the dictatorship of the proletariat; (3) that this dictatorship itself only constitutes the transition to the abolition of all classes and to a classless society. The revolutionary class is that class which finds itself unable to exist under the conditions a particular stage of the development of the forces of production has created, and the progress of a revolution reflects the struggles of that class in utilizing existing conditions to change the order of society in such a way that they may benefit by the new conditions of production."

Laski's Rise of Liberalism is such a picture of the rise of the bourgeoisie (capitalist class) through overcoming, first, the domination of the church, then, of the feudal barons, then, of the political aristocracy, and finally the seizure of parliamentary control. It represents a series of revolutions differing in form from period and period and place to place. There is no specific formula for revolution.

For Marx, as for the dictionary makers (New Century), revolution is a term used to denote, "A complete or marked change in something." In this general sense, in Kapital, Marx refers to the agricultural revolution, "the change of arable land into pasture land," (P. 778); the passage of modern

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

manufacture and domestic industry into modern mechanical industry (Kapital, P. 515) etc., but of course the term has also the more popular meaning, [261] as the overthrow of a form of government, or of a political or social system. From the philosophy of history, it should be clear that neither Marx nor Engels is sufficiently naive to believe that a revolution in this sense or any other can be produced by any group at will, when the conditions are not suitable, or can be avoided when conditions are right to bring it about. Just as in the dialectic of nature, it is impossible that water should freeze unless its temperature is lowered under constant conditions of pressure, or that it should not freeze if the temperature is sufficiently lowered, so "no social order is destroyed until all the production forces for which it gives scope have been developed: new and higher production relations cannot appear until the material conditions for their existence have ripened within the womb of the old social order."

"Once Engels gives a somewhat general indication of the course the revolution from capitalism to socialism is likely to take. A year before the publication of the Manifesto, Engels published in the form of questions and answers, a discussion called "The Basic Principles of Communism" (Grundsatze des Kommunismus.) As this document has not been translated, I shall have to use my own trans-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

lation. It is to be found in the Gesamtausgabe (Volume VI, Pp. 503-522.) He is concerned with the abolition of private property, that is, of privately owned instrumentalities of production. Question 16 asks:

> "Will the abolition of private property be possible in a peaceful way?"

And the answer is:

> "It were to be wished that this could happen, and the Communists would be the last to take exception thereto. The Communists know only too well that all conspiracies are not only useless, but even harmful. They know too well that revolutions are not made [262] arbitrarily and to order, but that everywhere and at all times, they were the necessary consequences which are entirely independent of the will and control of particular parties and whole classes. They also see, however, that the development of the proletariat in almost all civilized lands is forcibly suppressed, and that in this way the opponents of the Communists are making with all their might for a revolution. Should the oppressed proletariat be in this way driven finally to a revolution, then we Communists will defend the cause of the proletarians just as well with deeds as we now do with words."

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

On this issue, Marx later comments (Amsterdam speech of 1872:)

> "Of course, it must not be supposed to imply that the means to this end (the establishment of a new organization of labor) will be everywhere the same. We know that special regard must be paid to the institutions, customs and traditions of various lands; and we do not deny that there are certain countries, such as the United States and England in which the workers may hope to secure their ends by peaceful means."

And Engels concurs in his preface to the First English Translation of Capital, '86 (Pp. 31-32:)

> ". . . we can almost calculate the moment when the unemployed, losing patience, will take their own fate into their own hands. Surely, at such a moment, the voice ought to be heard of a man whose whole theory is the result of a lifelong study of the economic history and conditions of England, and whom that study led to the conclusion that, at least in Europe, England is the only country where the inevitable social revolution might be effected entirely by peaceful and legal means. He certainly never forgot to add that he hardly expected the English ruling classes to submit, without a 'pro-slavery rebellion,' to this peaceful and legal revolution."

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

But to recur to the Grundsatze, question 17 reads: [263]

> "Will it be possible to abolish private property at a single stroke?" And the answer is, "No; just as it has taken time to build up the productive capacities of present-day societies, it will take more time to build up the productive capacity for a communist society."

Question 18 asks: "What course of development will this revolution take?"

> "It will set up above everything else a democratic form of government and thereby directly or indirectly establish the political rule of the proletariat. Direct in England, where the proletariat already make up the majority of the people; indirectly in France and Germany, where the majority of the people are not only from the proletariat but also from the small farmers and petit bourgeoisie who are in the process of being transformed into proletarians and in their political interests are becoming more and more dependent upon the proletariat, and, therefore, must soon yield to the demands of the proletariat. This may involve a second struggle, which can only end in the victory of the proletariat. Democracy would be wholly useless to the proletariat if it cannot be used for the passing of laws which di-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

rectly lay hold of private property and safeguard the existence of the proletariat."

There follows an enumeration of a dozen laws concerning such matters as progressive inheritance and income taxes, slum clearance, universal education at state expense, a national state banking system, and government competition with private industry, with a gradual expropriation of such industries either through competition or by taking them over with recompense to the previous owners. The concluding comment is:

"Naturally, all these laws cannot be carried through at once, but some will naturally draw others after them."

There is a condensation of this answer at the end of the [264] Manifesto (part 4) but in the preface to the edition of '72, Engels especially comments on this passage as not to be greatly stressed since such practical applications depend "on the historical conditions for the time being existing."

In the Preface to the Class Struggles in France, there are some interesting further developments of the theory of revolution:

"All revolutions up to the present day have resulted in the displacement of one definite class rule by another; all ruling classes up till now have been only minorities as against the ruled

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

mass of the people. A ruling minority was thus overthrown; another minority seized the helm of state and remodelled the state apparatus in accordance with its own interests * * *

"Even where the majority took part, it did so—whether wittingly or not—only in the service of a minority; but because of this, or simply because of the passive, unresisting attitude of the majority, this minority acquired the appearance of being the representative of the whole people.

"The German workers supplied their comrades of all countries with a new weapon, and one of the sharpest, when they showed them how to use universal suffrage.

"The Communist Manifesto had already proclaimed the winning of universal suffrage, of democracy, as one of the first and important tasks of the militant proletariat.

"The franchise has been, in the words of the French programme, 'transforme, de moyen de duperie qu'il a ete jusqu'ici, en enstrument d' emancipation'—they have transformed it from a means of deception, which it was heretofore, into an instrument of emancipation." (PP. 14, 19, 20.)

"With the successful utilization of universal suffrage, an entirely new mode of proletarian struggle came into force, and this quickly de-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

veloped further . . . They took part in elections to [265] individual diets, to municipal councils and to industrial courts; they contested every post against the bourgeoisie in the occupation of which a sufficient part of the proletariat had its say. And so it happened that the bourgeoisie and the government came to be much more afraid of the legal than of the illegal action of the workers' party, of the results of elections than of those of rebellion.

"Rebellion in the old style, the street fight with barricades, which up to 1848 gave everywhere the final decision, was to a considerable extent obsolete.

"Let us have no illusions about it: a real victory of an insurrection over the military in street fighting, a victory as between two armies, is one of the rarest exceptions." (P. 21.)

"Does the reader now understand why the ruling classes decidedly want to bring us to where the guns shoot and the sabres slash? Why they accuse us today of cowardice, because we do not betake ourselves without more ado into the street, where we are certain of defeat in advance? Why they so earnestly implore us to play for once the part of cannon fodder?

"The gentlemen pour out their prayers and their challenges for nothing, for nothing at all. We are not so stupid.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"If the conditions have changed in the case of war between nations, this is no less true in the case of the class struggle. The time of surprise attacks, of revolutions carried through by small conscious minorities at the head of unconscious masses, is past. Where it is a question of a complete transformation of the social organization, the masses themselves must also be in it, must themselves already have grasped what is at stake, what they are going in for with body and soul! . . . But in order that the masses may understand what is to be done, long persistent work is required, and it is just this work which we are now pursuing, [266] and with a success which drives the enemy to despair." (P. 25.)

"Even in France, the Socialists are realizing more and more that no lasting victory is possible for them, unless they first win the great masses of the people, i. e., in this case, the peasants. Slow propaganda work and parliamentary activity are being recognized here too as the most immediate tasks of the Party.

"Of course, our foreign comrades do not renounce their right to revolution. The right to revolution is, after all, the only real 'historical right,' the only right on which all modern states without exception rest." (P. 26. Engels recurs to this in 1889.)

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"(Letter of Engels to Bebel, November 18, '84, P. 427:)

"Throughout the whole of Europe the existing political situation is the product of revolutions. The legal basis, historic right, legitimacy, have been riddled through and through a thousand times or entirely overthrown. But it is in the nature of all parties or classes which have come to power through revolution to declare that the new basis of right created by the revolution should also be unconditionally recognized and regarded as holy. The right to revolution did exist—otherwise, the present rulers would not be rightful—but from now on it must exist no more." (Cites many examples.) "Indeed no party has renounced the right to armed resistance in certain circumstances without lying. None has ever been able to relinquish his ultimate right, but once it comes to the question of discussing the circumstances for which a party reserves to itself this right . . . to require unconditional declaration of this kind from such a party (an outlawed party) is sheer absurdity. For the rest, the gentlemen can keep calm. With military conditions as they are at present we shall not start an attack as long as there is an armed force against us."

The right as here stated is nothing more than was claimed by Jefferson and Lincoln, and surely

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

they could not be accused of [267] advocating the violent overthrow of the government. The following ironic quotation supports this view:

> "It is now, almost to the year, sixteen hundred years since a dangerous party of revolt made a great commotion in the Roman Empire. It undermined religion and all the foundations of the state; it flatly denied that Caesar's will was the supreme law; it was without a fatherland, international; it spread over all countries of the Empire from Gaul to Asia, and beyond the frontiers of the empire. It had long carried on an underground agitation in secret; for a considerable time, however, it had felt itself strong enough to come out into the open. This party of revolt, who were known by the name of Christians, was also strongly represented in the army; whole legions were Christian." (P. 29, Introduction, Class Struggles in France.)
>
> "The Emperor Diocletian could no longer quietly look on while order, obedience and discipline in his army were being undermined. He intervened energetically, while there was still time. He passed an anti-socialist, I should say, anti-Christian law. The meetings of the rebels were forbidden, their meeting halls were closed or even pulled down, the Christian badges, crosses, etc., were, like the red handkerchiefs in

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Saxony, prohibited. Christians were declared incapable of holding offices in the state; they were not to be allowed even to become corporals . .. The Christians are even supposed to have burnt the Emperor's palace in Nicodemia over his head. Then the latter revenged himself by the great persecution of Christians in the year 303, according to our chronology. It was the last of its kind. And it was so effective that seventeen years later the army consisted overwhelmingly of Christians, and the succeeding autocrat of the whole Roman Empire, Constantine, called the Great by the priests, proclaimed Christianity as a state religion." (P. 29.) [268]

In the light of the philosophy of history, a "dangerous party of revolt" arises because from time to time

"in the development of productive forces there comes a state at which productive forces and means of intercourse are called into existence, which, under the existing relationships, only cause mischief, and which are no longer productive but destructive forces * * *: and connected with this a class is called forth, which has to bear all the burdens of society without enjoying its advantages, which, ousted from society, is forced into the most decided antago-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

nism to all other classes; *a class which forms the majority of all members of society,*" (Italics mine) "and from which emanates the consciousness of the necessity of a fundamental revolution, the Communist consciousness, which may, of course, arise among the other classes too through the contemplation of the situation of this class." (Feuerbach, PP. 68, 69.)

"Both for the production on a mass scale of this Communist consciousness, and for the success of the cause itself, the alteration of men on a mass scale is necessary, an alteration which can only take place in a practical movement, a *revolution;* this revolution is necessary, therefore, not only because the ruling class cannot be overthrown in any other way, but also because the class *overthrowing* it can only in a revolution succeed in ridding itself of all the muck of ages and become fitted to found a new society." (Feuerbach, P. 69.)

"The working class cannot simply lay hold of the readymade state machinery, and wield it for its own purpose. The centralized state power with its ubiquitous organs of standing army, police, bureaucracy, clergy, and judicature—organs wrought after the plan of a systematic and hierarchic division of labor—originates from the days of absolute monarchy,

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

serving nascient middle class society as a mighty weapon in its struggle against feudalism." (The Civil War in France, P. 37.) [269]

To replace these, the proletarian revolution, as a "practical movement," prefers peace. For example:

"From the 18th of March to the entrance of the Versailles troops into Paris, the proletarian revolution remained so free from acts of violence in which the revolutions, and still more the counter-revolutions, of the 'better classes' abound, that no facts were left to its opponents to cry about but the execution of Generals Lecomte and Clement Thomas and the affair of the Place Vendome." (2 killed and 9 wounded.) (The Civil War in France, P. 32.)

Trial Examiner Landis: This is a convenient place to adjourn.

(Whereupon, at 3:55 o'clock p. m., an adjournment was taken to August 16, 1939, at 9:30 o'clock a. m.) [270]

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

August 16, 1939

HAROLD CHAPMAN BROWN

Direct Examination

(continued)

The Witness: I think I stopped at the bottom of page 38. I will begin reading with the last paragraph I read yesterday, because it connects up with page 39:

To replace these, the proletarian revolution, as a "practical movement," prefers peace, for example:

> "From the 18th of March to the entrance of the Versailles troops into Paris, the proletarian revolution remained so free from acts of violence in which the revolutions, and still more the counter-revolutions, of the 'better classes' abound, that no facts were left to its opponents to cry about, but the execution of Generals Lecomte and Clement Thomas, and the affair of the Place Vendome." (2 killed and 9 wounded.) (The Civil War in France, P. 32)

But it may meet a war of counter-revolution, after the revolt of June 1848, the bourgeoisie showed, for the first time,

> "to what insane cruelties of revenge they will resort the moment that the proletariat ventures to take its stand against them as a class apart with its own interests and demands. And yet, 1848 was only child's play compared to their

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

frenzy of 1871." (The Civil War in France, Introduction, P. 9.)

The first step is to get control of the machinery of the state:

"The anarchists put the thing upside down. They declare that the proletarian revolution must begin by doing away with the political organization of the state. But after its victory the sole organization which the proletariat finds already in existence is precisely the state. This state may require very considerable alterations before it can fulfil its new functions. But to destroy it at such a moment would be to destroy the only organism by means of which the victorious proletariat can assert its newly-conquered power, hold down its capitalist adversaries and carry out that [271] economic revolution of society without which the whole victory must end in a new defeat and in a mass slaughter of the workers similar to those after the Paris Commune." (Letter 186, April 18, '83, P. 417, to Van Patten.)

"The first act in which the state really comes forward as the representative of society as a whole—the taking possession of the means of production in the name of society—is at the same time its last independent act as a state. The interference of the state power in social relations becomes superfluous in one sphere af-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

ter another, and then ceases of itself. The government of persons is replaced by the administration of things and the direction of the process of production. The state is not 'abolished' —it withers away." (P. 315.)

"The possibility of securing for every member of society, through social production, an existence which is not only fully sufficient from a material standpoint and becoming richer from day to day, but also guarantees to them the completely unrestricted development and exercise of their physical and mental faculties—this possibility now exists for the first time, but it does exist." (Anti-Duhring: Socialism, P. 317.)

"To carry through this world-emancipating act, of bringing this about, is the historical mission of the modern proletariat. And it is the task of scientific socialism, the theoretical expression of the proletarian movement, to establish the historical conditions and, with these, the nature of this act, and thus to bring to the consciousness of the now oppressed class the conditions and nature of the act which it is its destiny to accomplish." (P. 318.)

Jingoistic terrorism is no part of a Marxist program.

"As to Hyndman," wrote Engels to Bebel (Letter 200, March 18, '86,) "the way he came

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

out in Trafalgar Square and Hyde Park on [272] February 8 has done infinitely more harm than good. Shouting about revolution, which in France passes off harmlessly as stale stuff, is utter nonsense here among the totally unprepared masses and has the effect of scaring away the proletariat, only exciting the demoralized elements. It absolutely cannot be understood here as anything but a summons to looting, which, accordingly, followed and has brought discredit which will last a long time here, among the workers too." (P. 447.)

And Marx holds back from the initiation of violent revolt. Lenin tells us (State and Revolution, P. 179:)

"It is well known that in the autumn of 1870, a few months prior to the Commune, Marx warned the Paris workers that an attempt to overthrow the government would be the folly of despair. But when in March, 1871, a decisive battle was *forced* upon the workers and they accepted it, when the uprising had become a fact, Marx welcomed the revolution with the greatest enthusiasm, in spite of unfavorable auguries * * *"

In summary, for Marx and Engels, the process of the proletarian revolution is this:

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

(1) The conflict between the capitalistic methods of production and the relations of production produces a growing and increasingly unified proletariat through a concentration of the ownership of the instrumentalities of production in a few hands;

(2) Falling wages and increasing unemployment make the situation of this class ever more intolerable. (These points are asserted as facts, not as hopes or fears.)

(3) The majority of the people attempt to utilize democratic processes to have laws enacted for their own benefit.

(4) At this point they are likely to encounter opposition from the small section of the populace in whose hands the instruments of production are concentrated and who control the force of the state [273] (army, police, etc.) and who will resort to violence, if necessary, in order to prevent the people from attaining their ends and to perpetuate their rule. In such a situation the Marxians hold that the people have not only the right but the duty to resist such violence in order that the popular will be realized.

(5) Victory means that the majority of the people in both city and country (the workers and farmers) establish their own government—the dictatorship of the proletariat. And.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

(6) With its power established, the proletariat must reconstruct the machinery of the state to make a socialist economy function, until all men have become workers and the rule of classes is abolished with classes themselves. Then the state can "wither away." This is not the overthrow of government by force and violence, and neither Marx nor Engels ever suggested that any party, or even any minority group, could initiate or carry through this historical dialectic transformation by itself although by identifying itself with the proletariat, an understanding and active group, they believed, could furnish leadership that would shorten the way and ease the conflict necessary to attain the socialistic order of society which their philosophy of history proved to be imminent and inevitable.

> "'The Commune,' men explain, 'intends to abolish property, the basis of all civilization!' Yes, gentlemen, the Commune intends to abolish that class-property which makes the labor of the many the wealth of the few. It is aimed at the expropriation of the expropriators. It wants to make individual property a truth by transforming the means of production, land and capital, now chiefly the means of enslaving and exploiting labor, into mere instruments of free and associated labor. But this is Communism, 'impossible' Communism! Why those members of the ruling class who are intelligent enough

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

to perceive the impossibility of continuing in the [274] present system—and they are many—have become the obtrusive and full-mouthed apostles of cooperative production. If cooperative production is not to remain a sham and a snare; if it is to supersede the capitalist system; if united cooperation societies are to regulate national production upon a common plan, then taking it under their own control and putting an end to the constant anarchy and periodical convulsions which are the frivolity of capitalist production—what else, gentlemen, would it be but communism, 'possible communism'!" (The Civil War in France, P. 44.)

Leninism.

An extensive exposition of the doctrines of Leninism would add little that is vital to the purposes of this hearing, but I think it is important that I adduce citations to establish the following points:

1. Leninism is Marxism, not revised but extended to meet new conditions. Lenin writes (quoted in What is Leninism, PP. 108-110:)

"We stand squarely on the theory of Marx: it for the first time converted socialism from a utopia into a science, laid down a firm foundation for this science and marked the path to follow, developing this science further and working it out in all its divisions * * *

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"We do not at all regard the theory of Marx as something final and untouchable; we are convinced, on the contrary, that it only laid the cornerstone of the science which socialists *ought* to promote in every direction if they do not want to trail behind life."

Stalin defines Leninism as:

"Marxism in the epoch of imperialism and of the proletarian revolution. Or, to be more exact, Leninism is the theory and tactics of the proletarian revolution in general, the theory and tactics of the dictatorship of the proletariat in particular." (Problems of Leninism, P. 18.)

[275]

Imperialism is defined as:

"Capitalism in that stage of development in which the domination of monopolies and finance capital has taken shape; in which the export of capital has acquired pronounced importance; in which the division of the world by the international trusts has begun, and in which the partition of all the territory of the earth by the greatest capitalist countries has been completed." (Lenin: Imperialism, 1916, P. 16.)

"Imperialism is monopolistic capitalism . . .

(1) Monopoly arose out of the concentration of production at a very high stage of development.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

(2) Monopolies have accelerated seizure of the most important sources of raw materials, especially for the coal and iron industry in capitalistic society.

(3) Monopoly arose out of the banks. The banks changed from modest intermediary enterprises into the monopolists of finance capital.

(4) Monopoly arose out of colonial policy . . . When the whole world had been divided up, there was inevitably ushered in a period of monopolist possession of colonies, and consequently, of particularly intense struggle for the partition and repartition of the world." (P. 111.)

"Usually, the exceptionally militant and exceptionally revolutionary character of Leninism is emphasized, and rightly so. But this peculiarity of Leninism arises from two causes: First of all, because Leninism has sprung from the proletarian revolution the imprint of which it could not fail to retain—secondly, because it grew and became strong in the clashes with the opportunism of the Second International..." (Stalin: Foundations of Leninism, P. 9.)

2. *Leninism retains the Marxist emphasis on theory and reasserts the doctrine of the unity of theory and practice.* [276]

One of Lenin's major works, the Empirio-Criticism, is a technical defense of Marxian material-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

ism against certain pseudo-Marxians in Germany who were pressing toward Idealism under the influence of Ernst Mach and other German philosophers. It also develops the metaphysical and epistomological theory in accordance with advances that had taken place in science.

> "The role of vanguard can only be fulfilled by a party that is guided by advanced theory." (What is to be Done?, P. 28)

Theory is the root from which communism draws its vitality.

> "One of the greatest evils and misfortunes left to us by the old capitalist society is the complete isolation of books from practical life;" * * * "the mere assimilation of what is written in books about Communism would be in the highest degree wrong . . . It would be still more dangerous if we were to confine ourselves to the mere assimilation of Communist slogans." (What is Leninism? PP 69-70.)
>
> "Theory is the experience of the labor movement in all countries, taken in its general form. Of course, theory becomes immaterial if it is not connected with revolutionary practice, just as practice gropes in the dark if its path is not illumined by revolutionary theory . . . it alone, can give to the movement confidence, the power of orientation, and an understanding of the

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

inner connection between events; for it, and it alone, can help us in our practical work to discern how and in which direction classes are moving not only at the present time but also how and in which direction they will move in the near future . . . Without revolutionary theory there can be no revolutionary movement . . ." (What is to be Done? P. 28.)

3. *Lenin retains and develops the concept of the "dictatorship of the proletariat" and emphasizes the importance of democratic process as a step toward its attainment.* [277]

"The most urgent thing the workers must do, the first thing the working class must aim at, in bringing its influence to bear upon the government is to achieve *political liberty*, i. e., the guarantee by law (Constitution) that all citizens will be able directly to participate in the administration of the state; to secure for all citizens the right to assemble freely, to discuss their affairs through the medium of associations and the press. The achievement of political liberty is becoming the *'urgent task of the workers,'* because without it the workers have not, and cannot have, any influence on the affairs of the state, and for that reason must inevitably remain a degraded and voiceless class totally without rights." (Lenin, Selected Works, Vol. I, P. 491.)

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

He repeats the Marx-Engels statement that "the democratic republic is the nearest approach to the dictatorship of the proletariat," and explains that

> "literally, the word 'dictatorship' means the undivided rule of a single individual unrestricted by any laws—and autocracy, which differs from despotism only in that it is regarded, not as a permanent state institution, but as a transitory emergency measure.
>
> "The term 'dictatorship of the proletariat,' hence, is not the dictatorship of a single individual but of a *class*. This ipso facto precludes the possibility that Marx in his connection had in mind 'dictatorship' in the literal sense of the term.
>
> "He speaks in this connection not of a form of government, but of a state of things, which must necessarily arise whenever and wherever the proletariat has conquered political power." (Proletarian Revolution, P. 17.)

That is, the "state of things" would be one in which the majority, workers, could really pass and enforce laws representing their own interests.

> "The dictatorship of the proletariat cannot be complete [278] democracy, a democracy for all, for rich and poor alike; the dictatorship of the proletariat must be a state that is democratic in a new way (for the proletariat and

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

the poor in general) and dictatorial in a new way (against the bourgeoisie.)" (Foundations of Leninism, P. 51.)

In other words, it is the reverse of bourgeois democracy.

> "The whole point is that a bourgeois state, which is exercising the dictatorship of the bourgeoisie through a democratic republic, cannot confess to the people that it is serving the bourgeoisie; it cannot tell the truth, and is compelled to be hypocritical." (The Proletarian Revolution, P. 81.)

The Proletarian dictatorship does not suffer from this limitation, although, as with Marx, it "is not the end of the class struggle but its continuation in new forms" . . . for it is "a special form of class alliance between the proletariat . . . and the numerous non-proletariat strata of toilers (Petty bourgeoisie, petty proprietors, the peasantry, the intellectuals, etc.,) or their majority," (Lenin, Collected Works, Volume XXIV, Page 331.) It has still "to abolish the division of society into classes, to turn all the members of society into toilers, to eliminate all possibilities of the exploitation of man by man." (Lenin, Loc. Cit., PP. 314, 316.) In short, it has still to create a socialist society.

4. Lenin retains in essence the Marxian theory of revolution; Lenin writes in his "Left Wing Communism":

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"The fundamental law of revolution, confirmed by all revolutions, and particularly by all three Russian revolutions in the twentieth century is as follows: It is not sufficient for revolution that the exploited and oppressed masses understand the impossibility of living in the old way and demand changes; for revolution it is necessary that the exploiters should not be able to live and rule [279] in the old way. Only when the 'lower classes' do not want the old, and when the 'upper classes' cannot continue in the old way,.then only can revolution be victorious. This truth may be expressed in other words: revolution is impossible without a national crisis affecting both the exploited and the exploiters." (Foundations of Leninism, P. 43.)

"There is, however, a new emphasis on the effects of local conditions relevant to the development of revolutionary situations: The international revolutionary movement of the proletariat does not proceed and cannot proceed evenly and in the same forms in different countries. The thorough and all-sided utilization of all possibilities in all spheres of activity comes only as a result of the class struggle of the workers of various countries. Every country contributes its own valuable original traits to

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

the general stream, but in every individual country the movement suffers from some kind of one-sidedness, from some theoretical or practical shortcoming in the individual socialist parties." (Historical Roots of Leninism, PP. 33-34.)

Also,

"the uneven development of capitalism, which became more accentuated in the period of imperialism, has given rise to a variety of types of capitalism, to different stages of ripeness of capitalism in different countries and to a variety of specific conditions of the revolutionary process. These circumstances make it historically inevitable that the proletariat will come to power by a variety of ways and degrees of rapidity; that a number of countries must pass through certain transition stages leading to the dictatorship of the proletariat and must adopt various forms of socialist construction." (Program of the Communist International, Pt. IV, Sec. 8.)

Hence, it follows that

"The main task of contemporary Communism in Western Europe and America is to acquire the ability to seek, to [280] find, to determine correctly the concrete path, or the particular turn of events that will bring the masses right

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

up to the real, decisive, last and great revolutionary struggle" Task in America and England. (Lenin, Left-Wing Communism, Volume VI, Chapters IX, X.)

I hope the substantiation of these four points is sufficient to show that the alleged "exceptionally militant and exceptionally revolutionary character of Leninism" is not a departure from the philosophy of Marx and Engels. The stages of the revolutionary process, its course and its ends are the same. But to Lenin fell the lot not only of participating in the struggles of the proletariat to attain a new social order, but of participating in the defense of that order against counter-revolution when it had been attained and in laying the foundation of the development of a socialist society. It is not surprising that these experiences added militant and revolutionary character to his thinking. But as with Marx and Engels, a revolution is still an event growing out of the dialectic of historical forces that cannot be made by any part or minority group.

Miss King: We have no questions.

Cross Examination

By Mr. Shoemaker: Q. Professor Brown, we have here a number of books which have been introduced into evidence, bearing on the matter of

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Communism. Would you mind reading those, looking those over, at least, and telling me what you have read, please?

A. Well, I have seen and read most of "The History of the Communist Party of the Soviet Union."

Trial Examiner Landis: That is Government's Exhibit No. 75.

A. (Continuing) And I have read parts of "Strategy and Tactics."

Trial Examiner Landis: Government's Exhibit No. 76.

By Mr. Shoemaker: Q. You mean, by "parts," you have only read portions of it, Professor?

A. Yes. I am not sure I did read that [281] "Strategy and Tactics" through, but if I did I read very rapidly and looked back over some parts of it. I am not sure whether I read it through or not. I haven't read "The Struggle Against Imperialist War."

Trial Examiner Landis: Government's Exhibit No. 78.

The Witness: I haven't read Browder's "Theory as a Guide to Action."

Trial Examiner Landis: Government's Exhibit No. 79.

The Witness: I have not read "Capitalist Stabilization has Ended."

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Trial Examiner Landis: Government's Exhibit No. 80.

The Witness: I have read Browder's "What is Communism?"

Trial Examiner Landis: Government's Exhibit No. 81.

The Witness: I have not read this copy of the "Party Organizer."

Trial Examiner Landis: Government's Exhibit No. 85.

The Witness: I have not read "Acceptance Speeches" by William Z. Foster and Benjamin Gitlow.

Trial Examiner Landis: Government's Exhibit No. 83.

The Witness: I have not read this number of "The Communist," but I have seen some of the copies of that magazine.

Trial Examiner Landis: Government's Exhibit No. 84.

The Witness: Nor have I read that number.

Trial Examiner Landis: Government's Exhibit No. 73.

The Witness: I have read "Manifesto of the Communist Party."

Trial Examiner Landis: Government's Exhibit No. 57.

The Witness: I have read Stalin's "Problems Leninism."

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Trial Examiner Landis: Government's Exhibit No. 77.

The Witness: I have not read Bittelman's "Milestones in the History of the Communist Party."

Trial Examiner Landis: Government's Exhibit No. 91.

The Witness: I am not sure about the pamphlet, "Foundations [282] of the Communist International." If it is in Lenin's selected works I may have read it, but I have not read it in pamphlet form.

Mr. Shoemaker: Lay it aside.

Trial Examiner Landis: Government's Exhibit No. 90.

The Witness: I have not read "The Resolutions of the Ninth Convention of the Communist Party."

Trial Examiner Landis: Government's Exhibit No. 89.

The Witness: I have not read "On the Road to Bolshevization."

Trial Examiner Landis: Government's Exhibit No. 88.

The Witness: Nor Browder's "Out of a Job."

Trial Examiner Landis: Government's Exhibit No. 93.

The Witness: Or "The Working Class against the Capitalist Class."

Trial Examiner Landis: Government's Exhibit No. 92.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

The Witness: I don't think I have read "The Program of the Communist International."

Trial Examiner Landis: Government's Exhibit No. 58.

The Witness: I have read "The Foundations of Leninism."

Trial Examiner Landis: Government's Exhibit No. 71.

The Witness: I have read "A Letter to American Workers," by Lenin

Trial Examiner Landis: Government's Exhibit No. 72.

The Witness: I have not read this "Party Organizer."

Trial Examiner Landis: Government's Exhibit No. 70.

The Witness: I have not read this Olgin's "Why Communism?"

Trial Examiner Landis: Government's Exhibit No. 69.

The Witness: I have not read Bittelman, "The Communist Party in Action."

Trial Examiner Landis: Government's Exhibit No. 68.

The Witness: Nor have I read this other "Party Organizer." Perhaps I should give the dates of those? [283]

Trial Examiner Landis: They are marked. This is Government's Exhibit No. 67.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

The Witness: Another one (indicating).

Trial Examiner Landis: Government's Exhibit No. 66.

The Witness: Another one (indicating).

Trial Examiner Landis: Government's Exhibit No. 65.

The Witness: Another one (indicating).

Trial Examiner Landis: Government's Exhibit No. 64.

The Witness: I have not read this "Political Education."

Trial Examiner Landis: Government's Exhibit No. 63.

The Witness: Another "Party Organizer," not read.

Trial Examiner Landis: Government's Exhibit No. 62.

The Witness: I have seen a copy of Peter's "Manual of Organization," but I don't think I have read it all.

Trial Examiner Landis: Government's Exhibit No. 61.

The Witness: I have read Lenin's "Left-Wing Communism."

Trial Examiner Landis: Government's Exhibit No. 60.

The Witness: I have read Lenin's "State and Revolution."

Trial Examiner Landis: Government's Exhibit No. 59.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

By Mr. Shoemaker: Q. Do you recall offhand, Professor, any other books that you have read on Communism?

A. Well, I have cited one other book there, in the text here—What is the name of it, anyhow? I am very bad in forgetting names of books that I have read. I could probably find the citation here. Oh, it is Jackson's Dialectics, and I have read——

Q. (Interrupting) Do you regard yourself—Pardon me.

A. Pardon me. I have read a book published by Howard Selsam last year in New York, "Philosophy for Modern Man." It is a Communist—at least, it is a Marxian introduction of philosophy. And I have read—No: "Philosophy of Modern Man" is Leve, an English one; and "What is Philosophy?" is by Salsam. [284]

Q. Do you recall any other offhand?

A. Well, I have read a good deal more of the works of Lenin that I mentioned here, and of course I read a good many more books of Marx than I mentioned here.

Q. I take it that you regard yourself as an expert on Communism as well as Marxism; is that correct?

A. It depends on what you mean, and this——

Q. (Interrupting) Well, I mean—Do you want me to explain what I mean? A. Yes, sir.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Or do you want to go ahead?

A. I don't care; whatever you prefer.

Q. An expert, as I understand it, in the questions that I propounded dealt with a person who had a particular knowledge, perhaps, in the vast majority larger than anyone else of the vast majority of people on a given subject.

A. I think I know more about Communist philosophy than most people do. I don't know as much, naturally, about strategy and tactics as a Party member would know who is engaged in active work.

Q. Do you regard yourself as knowing anything about Party tactics and strategy?

A. Only in so far as can be inferred on books like Mr. Browder's "What is Communism?", the "People's Front,"—books of that sort.

Q. Are you a Communist? A. No.

Q. Have you ever been a member of the Party?

A. No.

Q. Have you ever made application to become a member of the Party? A. No.

Q. Do you recall when you first began studying about Communism?

A. I began first in connection with the philosophy of history, as I have said, in discussions at Columbia. I began later when I found out that I was—that my students began telling me that I was moving near the dialectic materialism in my

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

philosophy of science work. I wanted to see whether they were telling me the truth on that. [285]

And for the last seven or eight years I have been doing quite a good deal.

Q. From your study of these books, do you believe that force and violence is contemplated by the Communist Party in their activities in the United States?

A. I do not believe that the Communist Party intends or has any plans to initiate force and violence.

Q. What is that based on, please?

A. Their whole philosophy of history.

Q. Is it based on any knowledge of the individuals who are members of the Communist Party?

A. Well, it would be based—for instance, Mr. Browder is a member of the Communist Party, secretary of the Communist Party of the United States, as I understand it; he has written a great deal on the democratic front, on the fight against Fascism, and is strong for democratic organization definitely, and I find nothing in Mr. Browder that indicates any effort of the Communist Party to provoke force and violence. And as secretary of the Party, I suppose that his statements are authoritative for the Party.

Q. Do you know Mr. Browder personally?

A. I have never even seen him. I have heard him over the radio.

(Testimony of William Schneiderman.)

Q. I take it, of course, you have never talked to him? A. No.

Q. Have you ever talked to any other Communists? A. Yes.

Q. Who, for instance?

A. Well, about—I knew Lincoln Steffens quite well before he died, and Lincoln Steffens was a Communist, professed to be a Communist—the paper said he was; and either at the end of winter quarter or the early spring quarter, I was asked to go over to Mills College to take part in a forum on the rights of free speech and free assembly, to which they invited a Legionnaire, they invited me from the Civil Liberties Union, they sent over to San Francisco for a representative of the Communist Party to speak on the subject. The San Francisco office sent over Mrs. [286] Gannett,—Mrs. Betty Gannett, who I understand is a state educational director; something of that sort.

Q. Do you know any others?

A. Nobody that I could say was a Communist.

Q. Did you discuss Communism with them?

A. I did somewhat, yes.

Q. Did you get their impressions as to the aims and purposes, and perhaps the tactics and strategy of the Communist Party of the United States?

A. It seemed to me entirely in accordance with the history of philosophy, such conversations I had with them.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. I take it that you would be open to conviction, if I showed you in some of the writings here that the Communist Party does believe in the overthrow of the Government by force and violence, wouldn't you?

A. If the writings are by authorized Communists, you could show that, yes.

Q. I take it that you could construe words in the ordinary acceptation of the terms as those words are used in these books?

A. And in the light of historical setting and the situation in which the statement is made.

Q. In the light of the historical setting. Well, of course, Professor, you understand that in writing this very paper here you have quoted from books and pamphlets? A. Certainly.

Q. And I take it that you have done that in the light of the setting as expressed in the various books, and the purposes and the aims of the Communist Party? A. Exactly.

Q. Is that correct? A. Exactly.

Q. Well, during the course of the examination I shall show you a few words and I shall ask you to express your views in regard to them in the light of that setting that you state exists. Now, if I understand it, from the first portion of your pamphlet here, or article—whichever you want to call it—it does not express your personal views?

A. No.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. You have treated it objectively entirely?

A. Yes. [287]

Q. And yet, I take it, in the conclusion, that you are endeavoring to show something that admits of no doubt; is that correct?

A. No doubt as following from what goes before.

Q. In so far as it goes before, considering the quotations that are in this article? A. Yes.

Q. You said a minute ago that you were not a member of the Communist Party?

A. Correct.

Q. Have you ever been affiliated with the Communist Party? A. No.

Q. Have you ever been connected with the Communist Party in any way?

A. No, not that I know of.

Q. Well, if you had been you would know it, wouldn't you? A. I probably would.

Q. There couldn't be any doubt in your mind about that?

A. Well, I will answer in this way: that there are organizations that I belong to which are said to have some Communist members working in the organization, but whether they have or not I don't know. If you mean that is working with the Communist Party I may have; I don't know.

Q. How frequently has that been done, as far as you know? A. Has what been done?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Working with the Communist Party?

A. I don't know. They never appeared in any such fashion that I knew they were Communists.

Q. Did you ever work with Betty Gannett?

A. No.

Q. Did you ever work with Henry Schmidt?

A. No.

Q. Do you know Henry Schmidt?

A. I don't even know him.

Q. Did you ever work with Earl Browder on any subject? A. No.

Q. Roy Hudson? A. No.

Q. Walter Stack? A. No.

Q. Any person of that kind? A. No.

Q. Did you ever work with the Friends of the Soviet Union?

A. Never with the Friends of the Soviet Union.

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Q. Did you ever work with the Russian societies at all?

A. Yes. I am president of the American Russian Institute in San Francisco.

Q. What is that, please?

A. The American Russian Institute in San Francisco is an institution for the spreading of cultural knowledge about Russia in this country. We have exhibitions in the museum in San Francisco, University of California, Stanford, and we have an exhibit now on Treasure Island of Russian printing.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Do you deal at all in this connection with Communism?

A. No. It has nothing to do with political theory.

Q. Do you deal with individuals who come from Russia in that connection?

A. I have never seen individuals who came from Russia in this connection.

Q. Do you know whether Russians can come into this country without expressed permission?

A. I don't know.

Q. Have you ever been arrested?

A. No; never.

Q. Have you ever studied Communism in any manner, shape or form, other than in the printed or written word?

A. I don't know how you could quite do it otherwise.

Q. By contact with the individuals?

A. I have had no such contact with individuals.

Q. Then your entire knowledge of the Communist program, or the Marxian program—and when I refer to the Communist program I mean the Marxian program as well—is entirely gained from your study of the written word, written and printed word?

A. If one includes newspapers too, because there are sometimes Communist newspapers that give accounts of events that naturally one looks at from that point of view. I have done that.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Do you take any Communist newspapers?

A. No.

Q. Do you take the People's World?

A. Yes, I take the People's World.

Q. Do you take any other papers?

A. Newspapers—the Chronicle, the Palo Alto Times. [289]

Q. I mean Communist newspapers?

A. No.

Q. Naturally I wouldn't be concerned with metropolitan papers you take. How long have you taken the People's World?

A. Oh, two or three years.

Q. It is delivered at your home, I take it?

A. Yes, sir.

Q. Do you take any other Communist newspapers at all? A. No.

Q. Do you take any other periodicals, magazines, or anything of that nature, touching on Communism?

A. Yes. I take the New Masses.

Q. Any others? A. No.

Q. How long have you taken the New Masses?

A. I have taken the New Masses—it was the old Masses—since Max Eastman put it out. I have taken it since before the War. It lapsed for a while and it came to life as the New Masses.

Q. You have continued to take it, I assume, since that time continuously?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. Practically continuously. I may have missed a year. Occasionally, if I am away for a year, I let my subscription lapse for that year. I think I have had it practically continuously.

Q. You have been in pretty close touch with the Communist movement, haven't you, generally speaking?

A. I have followed it from the papers, and from such books and magazines as I have mentioned.

Q. Do you have any knowledge as to whether or not the Communist Party would, in their own language, put out a front and then use their theories as a blind to cover up their practices?

A. I shouldn't suppose they would. I have always thought—my impression has been that they had nothing to conceal. Certainly I should think in the bookstores that I have seen there sufficient material to anyone who wants wants it. If that is a front for something else I don't know what it is at all.

Q. Do you believe that the philosophy of Lenin or Communism should take over in the United States to the exclusion of our democratic institutions?

A. I don't know what you mean by the "Philosophy taking over." [290]

Q. Do you think that the philosophy of the Soviet Union is better than the philosophy of the democratic principle?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. I couldn't make that statement; no. The philosophy of Leninism, as it has been attributed, is a democracy of democratic philosophy too. I am not sure there is the opposition there that was in your mind.

Q. That is as you interpret it?

A. Yes, sir; and as I presented it.

Q. There are no trick questions here in any form. I don't want you to think there are. I do not have any idea of presenting trick questions. What principles or theories, so far as Leninism is concerned, would you advocate for adoption in the United States?

Trial Examiner Landis: Just a moment. The testimony of the Professor, with reference to his interpretation of the views of Marxian views, his understanding of what they mean, is one thing. But it seems to me that your examination is with reference to the personal belief of the Professor, which he has not testified to.

Mr. Shoemaker: One could hardly get the impression, if your Honor please, after reading the last four subjects, as expressed here in this book, in this pamphlet, or this article, that Professor Brown doesn't have some views with regard to philosophy, and perhaps to theories which might be considered of advantage to the United States, and I don't see any reason why I shouldn't ask the question under those circumstances.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Trial Examiner Landis: I am wondering what the purpose of this hearing is, whether it is to try the Professor for his——

Mr. Shoemaker (Interrupting): The Professor has been qualified as an expert. All right. I want to know what he knows about Communism.

Trial Examiner Landis: You are asking him about his personal beliefs.

Mr. Shoemaker: Exactly. I think I have to do that in order to find out what he knows about Communism. [291]

Trial Examiner Landis: He might be an authority on Communism and still be a good American citizen.

Mr. Shoemaker: I think that is the basis for the questions which will afterwards be propounded.

Trial Examiner Landis: Well, I don't quite see why a man can't be an expert on Communism and yet have no sympathy with Communism as such. If, for example, your point is that he has given a prejudiced interpretation of Marxism, then I can understand that.

Mr. Shoemaker: That is exactly what I expect to bring out here, prejudice and bias. I expect to show that definitely before I get through, if I understand the meaning of words. I think I do. That is what I want to bring out. That is, not just as to what I think, but as to whether you think it, and I think I can show it before I get through pretty well.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Trial Examiner Landis: I am interested in the relevancy of your line of questioning.

Mr. Shoemaker: If you think I am wrong, you stop me and I won't raise the slightest objection to that.

Trial Examiner Landis: Proceed.

By Mr. Shoemaker: Q. Do you know or believe that Stalinism is anything different from Leninism?

A. I know that in Communist theory Stalinism is concerned with the theory of the development of socialism under the dictatorship of the proletariat.

Q. Do you think that Stalinism is any different from Leninism?

A. No, not in basic theory.

Q. Stalinism is a follow-through, as you see it?

A. A follow-through. That is, new conditions raise new problems. There were problems before the Russian Revolution, problems during the Revolutionary period, and problems since the Revolutionary period. Those matters have been considered in the Institute that I spoke of.

Q. I take it, in your study of Communism, or Marxism, that you [292] have related it very carefully to the labor union movement, haven't you?

A. No; I have not, in only a very general sense, that the organization of labor is an obvious consequence.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. In other words, that the first approach, or the first vehicle through which the Communist Party moves is through the labor union, is that correct?

A. Through the development of organized labor, I should imagine.

Q. Do you think a man could be a good union man in the American labor movement because he does not believe in democracy?

A. If he does not believe in democracy; no.

Q. I think you said that you read "The Problems of Leninism." Will you read there on pages 19, 20, 22—read it out loud, if you will, please?

A. Do you want just from here (indicating), from the top of the page?

Q. That will be sufficient.

A. (Reading):

> "International imperialism, with all the might of its capital and its highly organized military technique, which represents a real force, a real fortress of international capital, could under no circumstances, under no possible conditions, live side by side with the Soviet Republic, both because of its objective situation and because of the economic interests of the capitalist class which was incorporated in it, it could not do this because of commercial ties and of international financial relationships. A conflict is inevitable. This is the greatest dif-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

ficulty of the Russia Revolution, its greatest historical problem: the necessity to solve international problems, the necessity to call forth the world revolution.

"Such is the inner character and the basic idea of the proletarian revolution.

"Can such a radical transformation of the old bourgeois system of society be achieved without a violent revolution, without the [293] dictatorship of the proletariat?

"Obviously not. To think that such a revolution can be carried out peacefully within the framework of bourgeois democracy, which is adapted to the domination of the bourgeoisie, means one of two things. It means either madness and the loss of normal human understanding, or else an open and gross repudiation of the proletarian revolution.

"It is necessary to insist on this all the more strongly, all the more categorically, since we are dealing with the proletarian revolution which has for the time being triumphed in only one country, a country surrounded by hostile capitalist countries, a country the bourgeoisie of which cannot fail to receive the support of international capital.

"That is why Lenin states that '* * * the liberation of the oppressed class is impossible, only without a violent revolution, but also with-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

out the destruction of the apparatus of state power, which is created by the ruling class.' "

That is the part you wanted me to read.

Q. Now, 22, please, Professor?

A. Page 22?

Q. Yes.

A. "Replying to those who confuse the dictatorship of the proletariat with 'popular,' 'elected' and 'non-class' government, Lenin states:

" 'The class which has seized political power has done so conscious of the fact that it has seized power alone. This is implicit in the concept of the dictatorship of the proletariat. This concept has meaning only when one class knows that it alone takes political power into its own hands and does not deceive either itself or others by talk about popular, elected government, sanctified by the whole people.' "

Q. After reading that, do you believe that a Communist, or a good [294] Communist, can be a good union man?

A. I don't see why not. As I understand it, that says in Russia, where you have got the situation of developing a socialist state in the midst of hostile capitalist states, in the first place, doesn't it?

Q. Yes.

A. Well, that doesn't mean anything that a trade unionist has to do particularly, as far as I can see.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

in overthrowing. It reiterates the idea of Marx and Lenin that the proletarian revolution, when it takes place in other countries, will involve force and violence; the "force and violence" being carefully defined by them as a resistance by a minority of a majority.

Q. Then do I——

A. (Interrupting) In taking power.

Q. Then do I understand that your conception of their view is this: that if I own property in the United States and they want it, and I don't give it up, then they are by right entitled to take it from me by force? A. No.

Q. I don't see how you can reach any other conclusion.

A. That is a very crude statement of the situation.

Q. Well, what is the——

A. (Interrupting) If, for example——

Q. What is the explanation, then?

A. I will go back to the Grundsatze that I cited in my paper. If a majority of workers in this country, or a majority of the population, should enact laws which by progressive income taxes, or by taking over industries by the government, following those things, and against whom they enacted laws, the majority enacted laws under our form of government, should resist the laws enacted by the government and resist violently, then they should

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

be met with violent resistance—that is the statement.

Q. Then these words, "Can such a radical transformation of the whole bourgeois system of society be achieved without a violent revolution, without the dictatorship of the proletariat?" mean to you, as I understand it, just this—and I don't want to [295] put words in your mouth; I just want to get your construction——

A. That is all right.

Q. ——that as long as the Communist Party is in the minority, they have a perfect right to work in the interests of the Communist Party, but violent revolution is inevitable and can't be avoided if they don't get what they want?

A. No; that wasn't what I said at all.

Q. All right. Then——

A. It is not quite the theory. I am only speaking from according to theory. It is not what I believe; it is according to theory. What is stated is very definitely that if a democratic majority—and you will notice all through Marx and Lenin, they do not expect the Communist Party by itself to do anything; they expect the Communist Party, by mingling with the workers, to get their sympathy, and in sympathizing with them they have a majority—and if the majority enacts laws and a minority resists those laws that are enacted—those laws that are enacted become the laws of the state, remember;

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

and if the minority resists them they are resisting by illegal means, and turning agencies of military or police against them by the majority is, they would say, an activity which is called for. They also say that the lesson of history is that if a majority stop doing that kind of thing, they will be resisted by the minority. That is part of the belief of Marx and Engels, in the Marx-Engels interpretation of history.

Q. Then do I understand it correctly that they are talking about a condition of society when the Communists have got to be in a majority entirely; is that correct?

A. Yes. I think I have here a little Lenin pamphlet that has a statement on that, that might be a pertinent case. Do you want me to read it? May I read this little statement?

Q. Go right ahead.

A. This is a little statement of Lenin's, [296] "On the Eve of October." This shows, at least in Leninism, the importance felt of having a majority with you. He says:

> "To be successful, the uprising must be based not on a conspiracy, not on a party, but on the advanced class. This is the first point. The uprising must be based on the revolutionary upsurge of the people. This is the second point. The uprising must be based on the crucial point in the history of the maturing revolution.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

when the activity of the vanguard of the people is at its height, when the vacillations in the ranks of the enemies, and in the ranks of the weak, half-hearted, undecided friends of the revolution are at their highest point. This is the third point. It is in pointing out these three conditions as the way of approaching the question of an uprising, that Marxism differs from Blanquism."

August Blanqui was a teacher of work by conspiracy and revolution.

"But once these conditions exist, then to refuse to treat the uprising as an art means to betray Marxism and the revolution."

Then he comes out with the particular situation in Russia:

"To show why this very moment must be recognized as the one when it is obligatory for the Party to recognize the uprising as placed on the order of the day by the course of objective events, and to treat uprising as an art—to show this, it will perhaps be best to use the method of comparison and to draw a parallel between July 16-17 and the September Days.

"On July 16-17 it was possible, without trespassing against the truth, to put the question thus: It would have been more proper to take power, since our enemies would anyway accuse

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

us of revolt and treat us as rebels. This, however, did not warrant a decision to take power at that time, because there were still lacking the objective conditions for a victorious uprising. [297]

"First, we did not yet have behind us the class that is the vanguard of the revolution. We did not yet have a majority among the workers and the soldiers of the capitals. Now we have a majority in both soviets. It was created only by the history of July and August, by the experience of ruthless punishment meted out to the Bolsheviks, and by the experience of the Kornilov affair.

"Secondly, at that tmie there was no general revolutionary upsurge of the people. Now there is, after the Kornilov affair. This is proven by the situation in the provinces and by the seizure of power by the soviets in many localities.

"At that time there were no vacillations on a serious, general, political scale among our enemies and among the undecided petty bourgeoisie. Now the vacillations are enormous; our main enemy, the imperialism of the Allies and of the world (for the 'Allies' are at the head of world imperialism), has *become* to vacillate between war to a victory and a separate peace against Russia. Our petty bourgeois

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

democrats, having obviously lost their majority among the people, have begun to vacillate enormously, rejecting a bloc, i. e., a coalition with the Cadets.

"This is why an uprising on July 16-17 would have been an error: We would not have retained power either physically or politically. Not physically, in spite of the fact that at certain moments Petrograd was in our hands, because our workers and soldiers would not have fought and died at that time for the sake of holding Petrograd; at that time people had not yet become so 'brutalized'; there was not in existence such a burning hatred both towards the Kerenskys and towards the Tseretelis and Chernovs——"

Q. Will you pardon me a minute, Professor? If you are going to read much longer, I will offer it for the record.

A. No; that covers that point. I will tell you the only point I am making there is that at that particular, crucial time, the action was not possible because a majority was not behind them, [298] and you have got to wait for a majority.

Q. All right. Let me read a portion of this on page 20:

"First let the majority of the population, while private property is still maintained, that is while the power and oppression of capital

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

are maintained, declare itself for the party of the proletariat. Only then can it, and should it, take power. That is what is said by petty bourgeois democrats who call themselves 'socialists' but are really the henchmen of the bourgeoisie.

"But we say: Let the revolutionary proletariat first overthrow the bourgeoisie, break the yoke of capital, break up the bourgeois state apparatus. Then the victorious proletariat will speedily gain the sympathy and support of the majority of the toiling non-proletarian masses by satisfying their wants at the expense of the exploiters."

You are not contending that, in view of what is said, what "we" say, that the majority must have obtained before the proletariats take over, are you? A. Yes.

Q. I don't see—I guess I don't understand it.

A. As I understand it. Perhaps I missed your quotation.

Q. But what "we" say, that is, in the "Problems of Leninism——" A. Yes.

Q. "But we say: Let the revolutionary proletariat first overthrow the bourgeoisie."

A. Yes. Now, that overthrow——

Q. (Interrupting) One moment. "Break the yoke of capital——" A. All right.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. "Break up the bourgeois state apparatus."

A. That might be through the enactment of laws, however.

Q. What is that?

A. That might be through the enactment of laws, however, as a democratic majority.

Q. All right, we will come to that in just a minute too. [299]

> "Then the victorious proletariat will speedily gain the sympathy and support of the majority of the toiling non-proletarian masses by satisfying their wants at the expense of the exploiters."

A. Yes.

Q. Certainly the majority are not, then, at that stage, when they break the yoke of capital, when they throw off the bourgeoisie, the persons in predominance; it is——

A. (Interrupting) How else could they do it in a democratic country?

Q. How do they do it in any country? How do they do it in Russia? You are not contending here that the majority, for instance, took over the Russian government at that time?

A. The point was made that until a majority rule, they couldn't take over really.

Q. I maintain to the contrary; that that is exactly what has happened.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. You see, you have in Russia—I am not an expert in Russian history, but you have the situation of a bad breakdown because the defeated armies were not paid and not fed, soldiers were deserting from the armies, the peasants were ready to fight for land; when those forces came together they really made a majority.

Q. Well, let us read on just a little bit, if you don't mind, because I think I can bring it home a little closer to you. In order to win the majority of the population to its side, Lenin continues, the proletariat must first of all overthrow the bourgeoisie and seize state power and, secondly, it must introduce soviet rule, smash to pieces the old state apparatus, and thus at one blow undermine the rule, authority and influence of the bourgeoisie and of the petty bourgeoisie compromisers in the ranks of the non-proletarian toiling masses.

> "Thirdly, the proletariat must completely and finally destroy the influence of the bourgeoisie and of the petty bourgeois compromisers among the majority of the non-proletarian toiling masses by the revolutionary satisfaction of their economic needs at the [300] expense of the exploiters."

Do you still think, in view of that, that the proletariat or the people who seize—and note the word "seize"—— A. Yes.

Q. ——state power, are the majority of the people?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. I should have to know the specific situation of that thing a little bit more fully, I am afraid, before I can answer that. In accordance to the philosophy it should be an effective majority; not necessarily the majority.

Q. All right. That is just what I am talking about. You can call it majority; I will call it minority.

> "Replying to those who confuse the dictatorship of the proletariat with 'popular', 'elected' and 'non-class' government, Lenin states:
>
> "'The class which has seized political power has done so conscious of the fact that it has seized power alone. This is implicit in the concept of the dictatorship of the prolet. riat. This concept has meaning only when one lass knows that it alone takes political power into its own hands, and does not deceive either itself or others by talk about popular, elected government, sanctified by the whole people."

Now, when he talks about a class taking over, does he mean the whole people taking over?

A. They are talking there about the conditions in Russia. Now, of course, one thesis of Marx and Engels that I tried to bring out and emphasize is that the type and character of revolution is to be different in every different country. Now, Tsarism, of course, was a very different thing to overthrow

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

or to change from what would be changed elsewhere, as it would be to change elsewhere. Of course, in a democratic government——

Q. (Interrupting) I will grant there are differences in every country, but the point I want to bring out is that in the concept of Leninism and Marxism, if you wish—after all, Leninism is only a [301] follow-through, as you say, of Marxism—that force and violence is contemplated by a minority of the population in the taking over of these things. They talk about the petty bourgeois; they don't talk about the bourgeoisie or the so-called vested interests; they don't talk about the soldiers; they don't talk about the working classes. They are talking about one class that is going to take it over, and what is that class—the proletariat?

A. Yes.

Q. And after all, the proletariat is a rather indefinable something that is open to construction according to different minds as they may view it.

A. It is pretty carefully defined by Marx and Lenin, Marx and Engels, but as far as relevance to your situation here is concerned, after the statement that the tactics of the Party would be different for every different country, the tactics in Russia at the time of the revolution have no bearing on, say, tactics of the Communist Party of the United States at the time; no relation to that whatsoever.

Q. I can't for one minute concede that, and I

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

think we will show to the contrary before we get through. Certainly in those things that I have read, the Communists don't mean a majority of the workers and the soldiers only, or a majority of the whole populace, from my viewpoint, as a prerequisite of the revolutionary situation which is to ensue.

Q. Well, a revolutionary situation, of course, rises out of the historical conflicts, as conflicts develop within the structure of the society; and that isn't made by anybody.

Q. I guess I don't get that relationship there, Professor. Will you repeat that?

A. I say, so far as revolutionary situation is concerned, as interpreted by Marx and Engels, it is the outcome of certain historical forces, historical conditions, and no one makes that situation. When it comes, it is a question of what you do in it. [302]

Q. I understand that. The statement has been made repeatedly in the books of the Communists and the books of the Communist writers, that the revolution does not just happen, that it is made; that is the point we are coming to later on.

A. This critical point is made when the situation has developed.

Q. According to the judgment of those people who are Communists solely—that is the point I want to bring to your mind—when the situation has developed, not according to the majority of the

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

people as a whole—I don't concede that, and I think that the Communist books will show just the contrary and I am going to read you some of them after a while to show you that.

A. Well, in Marx and Engels' theory, I would of course recognize it requires leadership, it requires people of skill and training to determine when a revolutionary situation is ripe, of course. That would be in line with their theory, as you would expect on the basis of their theory.

Q. Well, certainly, as I understand Leninism—and you can correct me if I am wrong, so we won't be talking at cross-purposes and maybe wasting a whole lot of words and a whole lot of time—as I understand Leninism, it is a philosophy which conceives of a nation being under the control of six or seven or eight men, possibly, or perhaps a few more, in the leading positions; and then there are on the fringe, or outside of those six or seven or eight men, who are, in fact, the dictators of this Communist practice or Communist as it exists, who have no control in the voice, so far as this central organization is concerned, of this six or seven or eight men; and then, on the outside of this 2,500 or so men, are the so-called masses. Now, is that Leninism, as you understand it.

A. No; it is not. And in the picture that was given by Webb of the structure of the Soviet Union, that is not a correct picture of the Soviet Union.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. I have been told that so many times by Communists of outstanding—— [303]

A. (Interruptnig) I wasn't told it by a Communist; I read it simply in Webb's account of the analysis of the structure of the Soviet Union.

Q. What is your construction of Leninism, so we won't be talking at cross-purposes?

A. I assume that his interpretation of Leninism, that in the Communist Party the Lenin-Stalin line is a consistent line, that Stalin has included Leninism—Stalin is in the Russian system at the present time the secretary of the central committee; if their claim is correct, it is in accordance with Marxism, and if Webb is correct in interpreting the structure of Russia it does conform to a kind of a democratic structure, and is not dictatorship as you say.

Q. As I outlined it, you mean?

A. Yes. I haven't been there, and I——

Q. (Interrupting) I just wanted to see that we weren't talking at cross-purposes. A. Yes.

Q. Do you know whether Earl Browder, for instance, before he could be a candidate for President of the United States would have to secure the approval of the Communist International?

A. I haven't any idea.

Q. I think you said you hadn't read the Constitution of the Communist International; is that correct? A. No; I have not.

Q. You have not read it?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. It seems to me I have seen some parts of it quoted somewhere, but I haven't read the whole thing.

Q. Does the Communist Party, so far as your judgment goes, believe in the overthrow of capitalism?

A. It believes in the overthrow of capitalism as inevitable.

Q. Do they themselves believe in doing away with capitalism and putting Communism in its place?

A. Why, you see, your question is put in a way that I have got to make a little correction.

Q. Make it any way you want. As I told you before, there are no trick questions.

A. There is one thing I am trying to get at,— [304] the truth of this thing, as far as I can. But if you believe in a certain historical process, and if you believe—and, of course, I haven't gone into Marx's Das Kapital at all; that is a long technical thing, and I am not too much of an economist—but if capitalism involves the contradictions that Marx says it does, and if it is constantly becoming unworkable, as what follows from that, then a change is inevitable; and if the only way out is either chaos or a socialism, then the reasonable thing would be to believe in socialism and in that sense would be to believe that capitalism must go under and will go under. The question simply should be a question, I

(Testimony of William Schneiderman.)

suppose, of simply when and how—if you take that history, accept that historical interpretation, accept that conclusion—then you are left with the question of when and how; it isn't a question of whether you want it or whether you don't want it.

Q. It is a question, in the first place, of historical interpretation they give. But that is neither here nor there. I am asking you if you believe that capitalism will go down and under, and a socialism——

A. (Interrupting) Oh, I don't think my opinion or your opinion is important about that. We are interested in what the Communist philosophy says about that.

Q. I understand that. Do you believe that the Communist philosophy, or the Communist writers do say that, that capitalism is bound to go down and Communism or a socialistic state arise?

A. Yes, I think they do. The inevitability of the collapse of capitalism at some time, under some conditions, is definitely there, I should say.

Q. Do you know whether in their teachings they believe in the overthrow of the capitalistic state?

A. Well, if you believed in such a transition, I should think it would be the logical thing. I think the logical thing would be to expect the transition to occur and to want to smooth the way to it as much as possible and get over [305] the bump: again, from an interpretation of history, these dia-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

lectic movements of rapid change haven't been very comfortable.

Q. Well, are they advocated in their teachings, expressed in their books, so far as you know?

A. Advocate what?

Q. The overthrow of capitalism.

A. I think there is a difference between advocating and predicting.

Q. Well, all right. Granted that there is, do you believe, from the reading of their books, that they have advocated the overthrow of capitalism?

A. No; I should say it was more prediction; consequently, an advocacy of assisting the process, possibly.

Trial Examiner Landis: Let us stop here for a few moments.

(Whereupon a short recess was taken, after which proceedings were resumed as follows):

Trial Examiner Landis: You may proceed.

By Mr. Shoemaker: Q. Do I understand correctly, Professor, that, according to the Marxist theory, the seed of proletarian revolution is inherent in the capitalistic system; is that correct?

A. That is correct, I think.

Q. And then the statement that the revolution doesn't just happen and must be made, means that —perhaps I had better ask you just what that means, in the light of that statement.

A. I should say it meant that when the critical

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

point of breakdown comes then the direction of the breakdown towards a socialism has to be made.

Q. It doesn't mean that the Communist Party would work toward that end, does it, as far as you can see?

A. I don't see how it would, necessarily; I don't see how it could.

Q. They just take advantage of the situation that is developed?

A. I should think that is correct.

Q. Well, if it doesn't just happen, and must be made, I just don't get that construction of the revolution which is going to ensue.

A. I thought that was just what we said; that is, if you get a [306] breakdown you might go into chaos—this is the Marxian theory, of course—and the only alternative to a breakdown is social revolution. Then it would be necessary for somebody to direct the force of that breakdown, to assume control, as is necessary to direct the process towards socialism, and then you make that revolutionary change to socialism. But you only make the direction; you have got the materials already there out of which to make it.

Q. It is only when chaos ensued that the Communist Party then will step into the picture?

A. When it is approaching, or when it is very near.

Q. Well, who would determine that,—the Communist Party?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. It would be, I suppose, presumably the enlightened Marxians.

Q. They would determine that, when approaching chaos, and in view of the imminence or the possibility of chaos, that they should step in and take control; is that correct?

A. Remember the Leninism formula for revolution that I cited toward the end of my paper.

Q. Yes.

A. Well—when the ruling class can no longer govern in the old way and when the workers are no longer willing to live under the conditions which they have had to live under, then you have a revolutionary situation.

Q. And the Communists are going to judge when that time is there?

A. Yes; and they will undoubtedly direct the revolution towards the particular socialism.

Q. Suppose you were approaching that step, that condition, at any future time, and the Communist Party were in the minority, would they be justified in taking over the control?

A. Lenin says they cannot successfully do it unless they get the majority of sympathizers on their side. That is in the early statements I read from Engels. The Party, as a group, went among the workers and won their sympathies by helping them fight their problems, and so had their [307] support, when the crisis came, for them.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Do you see any possibility, Professor, of that chaos in the near future?

A. I don't see it in the near future. I don't know much about the near future, what will happen.

Q. Say, in 30 years?

A. What would happen if we had an exhaustive world war? I don't know what would happen.

Q. Well, as you see it now, without a world war, or any other kind of a war?

A. If you had a world war, I don't know what the process would be; and I don't know at what moment the breakdown might come or what it might come from.

Q. Do you believe that the present Communist Party activities or movements in the United States, is directed towards preparing the proletariat for the day of revolution?

A. I should think that, in the light of Mr. Browder's book, "The People's Front," it is definitely taking steps to develop a people's front, which would be a prerequisite to meeting that kind of a situation.

Q. And that is true of his book, "What Is Communism?"

A. I think it is involved in that book, yes.

Q. Does the Communist Party advocate action to intensify the class struggle?

A. I am not quite sure what that would mean. If it means a strong fighting for the rights of labor,

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

or at least what labor conceives as its rights, supporting labor, if that is intensifying the struggle, the bringing out of the conflict that labor finds with capital, I would say the Communist Party would undoubtedly, I should think, do that.

Q. They are undoubtedly intensifying class struggle; is that your answer? A. In a sense.

Q. Do you think it would be possible to work out a plan whereby capital and labor could work in cooperation without having a class struggle?

A. Well, speaking from a Marxian point of view and not my own, if it is true that capital has been breaking down, that is, if the methods of production and the relations of production are [308] so in conflict that the present system cannot continue, if it is true that capitalism cannot feed a considerable portion of the people, and cannot learn to do it, then no collaboration will eventually solve the problem.

Q. Do you have any views with regard to that, yourself?

A. I am not an economist, and I am not a social historian, so I have nothing to say on that point.

Q. Do you wish to express a view on that?

A. No.

Q. Don't you think that any changes in our present capitalistic system can be made, if necessary, through an amendment of the Constitution, or by the enactment of Congress?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. If the democratic process is allowed to work.

Q. Do you think the democratic process is allowed to work today?

A. Well, that is a personal opinion. If I can express a personal opinion here, I have some doubts about it sometimes.

Q. Those doubts wouldn't carry to the extent of advocating, for instance, that the Communist state should be established here?

A. No. My doubt would take the form of suggesting that we ought to reelect some new assemblymen and new senators in the State of California.

Q. Suppose, for instance, a majority of the people should object to any change by amendment to the Constitution, or otherwise, would the Marxist theory envisage a peaceful solution to that situation?

A. Directly, yes; indirectly, the result would not be there. That is, if you get this breakdown of capitalism coming, and if particular interests could prevent an amendment to the Constitution that would ease the situation, and considering the position of the workers under that situation, that breakdown, and then a minority manage to keep such an amendment from being made, you probably would have violence,—as a prediction. [309]

Q. You have heard the term "Turn imperialist war into civil war," haven't you?

A. "Turn imperialist war into civil war," yes.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Do you know what that means as applied to the Communist Party doctrine?

A. I assume it means that when you have an imperialist war, it is likely to be followed by a general social breakdown such that a revolutionary situation is produced and that civil war would be possibly the way out of that situation towards socialism.

Q. Do you regard Communism as a rule of action or merely as a concept?

A. It is definitely a guide for action.

Q. Definitely a guide for action?

A. I should say so, in light of Marx's Philosophy of History, and particularly so in Marx's and Engels' statements made at different places at different times.

Q. Do you regard Communism in any such light as, for instance, Christianity, regarding one as spiritual and the other as material?

A. I think that is a pretty far-fetched analogy.

Q. In other words, Communism doesn't offer us something which the human soul longs for or seeks; it is simply a man-made proposition that comes into being because certain individuals advocate it; is that correct?

A. No; I should not say that is quite correct.

Q. What would say is correct?

A. I would say that, in the opinion of the Marxists, it is the definite outcome of what scientific

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

knowledge shows about what the process is that is going on in the world. That is, I think the first point I made is relatively important: that materialism professes to be nothing but the use of scientific knowledge. If you extend that to social science, economics as well as natural science, say, to economics, for example, if economic science shows a certain outcome—I am not saying whether economic science is correct or not—but if this science shows a certain outcome, and they take it because it is scientific, then that isn't quite what you want.

Q. You wouldn't regard Communism as an exact science or anything of [310] that kind? It is simply a growth, isn't it? That is, in practice, it is simply the application of scientific knowledge?

A. Yes.

Q. There would be nothing exact in it?

A. There can't be, because the social sciences cannot be perfectly exact, anyhow. I do not think anyone claims economics is as exact as arithmetic, for example.

Q. If someone differed on whether or not Communism would be a good thing they would be perfectly justified? A. Yes.

Q. When you said, in your article there, that you were treating this matter objectively, do I get the proper interpretation that you were treating it with approval?

A. No—treating it independently. I am trying to look at the situation, as I think, exactly as I

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

would at the philosophy of Thomas Aquinas. He was a medieval theologian, who laid down the philosopohies of the Catholic Church, which it still sticks by, and it would be perfectly possible for me to try to analyze those philosphies, as I have this, and say what people have offered as an opinion as to what people should think consistent with them. I am trying to do the same thing with Marxism.

Q. I notice you state here, Professor, on pages 41 and 42:

> "This is not the overthrow of government by force and violence and neither Marx nor Engels ever suggested that any party, or even any minority group could initiate or carry through this historical dialectic transformation by itself although by identifying itself with the proletariat, an understanding and active group, they believed, could furnish leadership that would shorten the way and ease the conflict necessary to attain the socialistic order of society which their philosophy of history proved to be imminent and inevitable."

What does that mean?

A. It means exactly that when this revolutionary situation is produced, or occurs, then they believe that a party or an active group could furnish leadership in such a [311] period of crisis to the proletariat to direct the outcome towards socialism.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Do you know specifically anything that Leninism has added to Marxism?

A. Why, in the sense that Leninism sharpened the concept of the Communist Party; and I think from Leninism comes the role of the Party discipline and the technical development of a party to carry on the work.

Q. You don't recall anything specific that it added to Marxism, do you?

A. Yes. There is one other addition. Lenin introduced the unequal development of capitalism in different countries and, consequently, the tendency for breakdown and revolution to come in different parts of the world at a different time.

Q. That is only the recognition of something that is obvious, isn't it? He didn't add anything, particularly?

A. Engels and Marx never emphasized that and Lenin did.

Q. Did he add anything specific, as far as you know?

A. I don't think there is a specific addition.

Q. Do you know whether or not Leninism has gone farther than Marxism?

A. Gone farther in what direction?

Q. In so far as a distinct and definite change in every way in the concept of, let us say, human relations—has he gone any farther than Marx?

A. Of course, Lenin lived in a period when the

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Russian Revolution took place and when there was an effort to start the foundation of building up of socialism, and consequently had to consider many practical problems there which Marx and Engels never met.

Q. In other words, it is simply an application of Marxism? A. I should think so.

Q. Nothing more than that; isn't that a fact?

A. I think that is a fact.

Q. Of course, you recognize that conditions have changed since Marx [312] wrote?

A. Absolutely.

Q. Are you an advocate, yourself, of Marxism?

A. No. At least, there again I don't think my personal opinions are of great importance in this situation. But I don't know quite——

Q. (Interrupting) I mean being an advocate of the points of Marxism.

A. I agree with some; some I don't; and other points I am undecided on.

Q. Taking it broadly and generally, are you in favor of the Marxist system being established and the overthrow of capitalism as we understand it?

A. Why, I think that would be a very foolish thing to be in favor of. I think the whole thing hangs in the laps—I don't know what the answer is. If the inherent construction of capitalism is such that it is breaking down that then something has to be done about it. If it is not so, then I don't know.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Do you believe it is breaking down?

A. I don't know. I can see many symptoms which would indicate it is breaking down, and others not—I don't know the answer.

Q. Have there been, so far as you know, different groups with varying views of Marxism?

A. Yes.

Q. Do you know what they are?

A. The Kautskyites are one definite group, and the Bernstein revisionists, and there have been various other groups that have broken out. I have paid no attention to those groups here because I understood this related to Marxism.

Q. I will come to that later because I think it is very important. The mere fact that a group calls itself Marxist should not be taken as final evidence of the teachings of that particular group, in so far as your judgment goes?

A. Not the fact that the group calls itself Marxist. It might be various things.

Q. Does the dictatorship of the proletariat mean the rule of the proletariat itself?

A. It means, originally, simply the coming into power of the proletariat class as a majority. It then may use [313] its power for its own benefit and the construction of socialism. Then that means the abolition of all other classes.

Q. What do you understand is meant by the term "the dictatorship of the proletariat"?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. I undestand it to mean the getting of power by the proletarian group as workers, peasants and the like, and the making of laws for their own benefit at the expense of capitalists. Then, with the dictatorship of the proletariat there, it continues until socialism is constructed, I suppose.

Q. Then what?

A. And—Lenin calls it an advance form of class struggle. Then, with the abolition of classes and the abolition of class antagonism, goes, in theory, and you have one class society.

Q. In other words, the dictatorship of the proletariat is something that attains only during a transition period? A. Yes, as I understand it.

Q. It is possible, of course, that force may be necessary? A. Yes.

Q. Under those circumstances?

A. On the whole, Marx and Engels' theory of the state is that a state always arises by the exercise of force.

Q. From your understanding of the Marxist theory, is it your understanding that the Communist Party contemplates action in the direction of a change solely by merely passive philosophical contemplation? A. Certainly not.

Q. They believe then in definite, positive action; is that right? A. Definite, positive action.

Q. Just before recess, you stated that the Communist Party predicted a revolution and did not

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

advocate it, but that the Communists might assist towards hastening it, or words to that effect; is that correct? A. Yes.

Q. You distinguish—Will you tell us how? What is the distinction between "advocacy" and "assistance," in that connection? [314]

A. Well, in the proper sense of the term, I should say that "advocacy" meant practically inciting to revolution. "Assisting" might mean, for example, in trade unions, helping trade unions organize, assisting trade unionists in winning their demands, in building up popular sympathy and, in a sense, a solidarity among workers. That would be "assisting," in the sense of preparing.

Q. What would be your definition of "advocacy," under those circumstances?

A. Getting out and saying, "Let's have a revolution."

Q. We were talking a minute ago about the different groups among Marxists. Would you tell us the difference between the one which was represented by Edward Bernstein?

A. I don't know very much about that. I haven't followed those groups. I have been interested primarily in the major trend of the philosophy.

Q. They are called today, so-called revisionist groups? A. Yes.

Q. Do you know anything about the social democrats, as represented by Kautsky?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. If I recall correctly, they also went to a line of passivity.

Q. Do you know about Australian socialists?

A. No.

Q. That is represented by Otto Bauer?

A. Yes.

Q. And then the Communists, which are represented by Lenin? A. Yes.

Q. Now, the revisionist groups, Professor, do you know whether they believe in revolution or not?

A. I don't know much about them.

Q. Do you know whether this other group, these other groups, believe in revolution?

A. The Kautsky group does. I don't know about the others.

Q. Do you know whether they advocate a dictatorship of the proletariat? A. No; I don't.

Q. Do you know whether Lenin was in opposition to any of those other groups?

A. Very definitely.

Q. Why?

A. The title of the book, "Renegade Kautsky:" from that, I would say it suggests opposition. Of course, "The Imperial [315] Criticism," is a complete attack of the other social philosophy.

Q. Why was Lenin opposed to those other groups, outside of Kautsky, and the others, "Renegade Kautsky"?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. He felt their methods would fail and were simply betraying the end sought.

Q. Didn't he take a view positively and without any question that the reason he was opposed to them was because they didn't advocate the overthrow of the bourgeoisie through armed revolution?

A. At the proper time.

Q. All right. But that was only the difference between the groups, wasn't it?

A. At the proper time; yes.

Q. What he regarded as the proper time?

A. Yes.

Q. Did you ever read "Evolutionary Socialism," by Edward Bernstein? A. No; I haven't.

Q. Do you know why Lenin and the other Communists attacked Bernstein so definitely and so intensely?

A. Only in so far as that general statement goes, that they felt he was betraying the end and introducing a philosophy and an attitude which would block the coming of socialism.

Q. If I should say, then, that the reason was—why Lenin and the other Communists attacked Bernstein so intensely and definitely was because Bernstein did not believe in revolution and force, would I be correct or incorrect, as far as you know?

A. That would be correct; only I would want to know about the interpretation that Lenin did believe in revolution—I would want that, as a special sense.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Qualify it any way you wish. Do you know why the Communists attacked Bauer so definitely and so violently?

A. I am afraid I don't. I have read it, but I don't recall.

Q. Do you remember whether Bauer was a left-wing socialist or [316] a Communist?

A. I am afraid I don't.

Q. Do you know whether he agreed with Lenin in his philosophies? A. Not very much.

Q. Then, I won't ask questions on that. You knew that Lenin had directed a polemic against Kautsky; don't you?

A. Yes. I think I cited that book, didn't I?

Q. Yes, I think you have. You are familiar with it, aren't you, in a certain sense? And I will give it to you, if you want it. I mean Lenin's book on "The Proletarian Revolution and Renegade Kautsky." At this time, if you don't mind, Professor, I will offer this as one of the Government's exhibits.

Trial Examiner Landis: The book entitled "The Proletarian Revolution and Renegade Kautsky," by V. I. Lenin, offered as Government's Exhibit No. 98, is received without objection.

(Government's Exhibit No. 98 received in evidence.)

By Mr. Shoemaker: Q. I don't want to take the time to read all of this. I am wondering if I can phrase my question so as to save time. It looks al-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

most necessary. Suppose I read portions of it to you and then ask you questions—I don't—I will withdraw my question. It is too much to read and it will take too much time. I think you said you read "State and Revolution"? A. Yes.

Q. That is Government's Exhibit No. 59 I am going to withdraw that question, too. You are familiar with the Third Communist Internationale, are you not, Professor?

A. I don't know what you mean—the document?

Q. Yes. A. I haven't read it.

Q. You know something about the Third Communist Internationale? A. Yes.

Q. Do you know any of the reasons which led to the formation of the Third Communist Internationale?

A. It was a break, wasn't it, between those in the Second Internationale over the question of [317] revolution being a necessary event and would have to be conducted by violence?

Q. Is it a fact that the Second Communist Internationale combined with the bourgeoisie and supported the world war?

A. I think it is; I am not sure, but I think it is.

Q. And didn't Lenin then declare all socialists who supported their government to be traitors?

A. I wouldn't be surprised; I don't know.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. And then there was a move for the formation of the Third Internationale, which was to lead the workers to overlook their governments; isn't that a fact?

A. That was the outcome of it, yes.

Q. Wasn't the real purpose of the Third Internationale to prepare the workers of the world for the rule of the proletariat? A. Yes.

Q. Definitely that is the case, isn't it?

A. Yes.

Q. Do you know anything about the revolutions which were led by the Communists in Hungary?

A. No; I don't.

Q. Do you know anything about the revolutions which were led in Bavaria by the Communists?

A. Practically nothing.

Q. Do you know anything about the revolutions led in Germany by the Communists?

A. No; I don't know about that.

Q. Do you know anything about the revolutions led by the Communists in Bulgaria?

A. I don't know anything of those to amount to anything.

Q. They obtained about 1919.

A. I read newspaper reports, but it has gone out of my mind. I am not a historian and did not keep those historical facts in mind.

Q. Do you know whether or not Lenin and the Third Internationale did not believe in these revo-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

lutions at that time because they believed in a revolution which would take place generally through an armed intervention?

A. No; I don't know.

Q. You don't know anything about that?

A. No. [318]

Q. All right. Do you know anything about the left-wing groups which broke away from the Socialist Party of the United States in 1919 and organized the Communist Party?

A. I simply know that the event occurred.

Q. Do you know the cause of the split between the Socialists and the left-wingers? A. No.

Q. Does this bring anything to your recollection: That it was due to the fact that the left-wingers were preparing for revolutionary action in the United States?

A. That they accepted the philosophy of revolution would have been true, surely.

Q. You don't know very much about the arguments which were used pro and con in that discussion? A. I don't.

Q. Do you know anything about Morris Hillquit in connection with those arguments between the left-wingers and the socialists?

A. Very little. I have been badly informed about that kind of thing in this country.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Do you know whether Morris Hillquit was attacked by the left-wingers, or the Communists, because he didn't believe in revolution?

A. I think he might have been; I don't know. I don't know the country history of that at all.

Q. Do you know Sidney Hook? A. Yes.

Q. Do you know Harry Laidler? A. No.

Q. Do you know James O'Neil? A. No.

Q. You don't know Laidler or O'Neil?

A. No.

Q. Do you know whether any of those gentlemen believe in violent revolution?

A. I don't know.

Q. Do you know any book which was written by Sidney Hook?

A. He wrote, for one thing, "From Hagel to Marx." He also wrote—he has a synopsis of Capital—A synopsis from Capital.

Q. Do you know what Laidler wrote?

A. No.

Q. You may have read his "History of Social Thought"? [319]

A. I have not read that.

Q. Do you know what James O'Neil wrote?

A. No.

Q. Do you know whether these men have been attacked by the Communist Party throughout the years and the reason?

A. I know that Sidney Hook has been attacked.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Do you know why?

A. Introducing ideas of pragmatic tendencies. He is quite a disciple of John Dewey.

Q. Does he believe in the overthrow of government by force and violence, as far as you know?

A. I couldn't answer; I don't know.

Q. He wasn't attacked because he doesn't believe in the use of force, was he, as far as you know?

A. I don't know. I met Hook at a philosophic convention and the last time we discussed the theory of mind entirely and the theory of epistemology.

Q. Thank you for the word, Professor. Do you know why the Communists attacked Norman Thomas?

A. Why, for betraying the cause of socialism, and for going against the New Deal, for one thing; and for being unwilling to enter a united front.

Q. Do you know whether he was opposed because he doesn't believe in violent revolution?

A. That is probably true. As far as Browder was concerned, I think the attack was largely on the basis of his unwillingness to enter a united front and unwillingness to support the New Deal.

Q. Have you read "The State in Theory and Practice," by Harold J. Laski?

A. I think I read that when it first came out; yes.

Q. Have you read——

A. (Interrupting) I don't remember it clearly.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Have you read "How to Make a Revolution," by Raymond W. Postgate? A. No.

Q. Have you read "Fabian Essays," by George Bernard Shaw, and others?

A. No. I have had the book in my hands and read parts of it, but not the whole. [320]

Q. You have read "Property or Peace," by H. N. Brailsford? A. No.

Q. Have you read "Democracy and Changing Civilization," by John A. Hobson? A. No.

Q. Have you read "Guild Socialism," by G. D. H. Cole? A. No.

Q. You don't know whether the Communist Party approves any of those books that you have seen or read, and why, do you?

A. What is that?

Q. Do you know whether the Communist Party approves or does not approve of any of those books that you have read that I mentioned?

A. I don't remember seeing any of them in such literature as I have read, mentioned as approved.

Q. Do you see any possibility of a distinction between Communism and a political theory, and the teaching of a particular group who simply claims to base their doctrine upon the philosophies of Communism as taught by Marx?

A. Well, you mean they would make the claim, claim the same philosophies that the Communist Party do?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. That base their doctrines on the philosophy of Communism, but, as a matter of fact, this group might be entirely dissimilar from the expressions of Marx as set forth in his books.

A. It would not be an interpretation of Marx or Lenin's Communist conception?

Q. You don't see any possibility of distinguishing between such——

A. (Interrupting) That there are such groups? Oh, certainly.

Q. How would you distinguish between them, for instance, some people claiming to represent the views of Marx and advocating certain things, and other groups—let us take just the book itself: Do you see any possibility of a distinction between a group of that kind and the actual teachings as expressed in the book? A. There might be.

Q. In other words, that the group that were actually claiming to represent the philosophy or doctrines of Marx might be entirely wrong in their conception of what Marx intended?

A. There is a [321] possible question of the correct interpretation of Marx, yes; that is a question that could be raised.

Q. In your opinion, does the mere fact that a specified group calls itself "Communist" prove that there is nothing in their teachings but pure Marxism as a theory?

A. If a group just called itself "Communist," I wouldn't quite know what that meant.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Suppose, for instance, a Communist Party of the United States called itself such, in other words, "The Communist Party of the United States"? A. Yes.

Q. Does the mere fact that it calls itself that prove that there is nothing in their teachings but pure Marxism as a theory?

A. The mere fact of calling itself that, of course, would not prove anything.

Q. Well, do you believe, for instance, that the Communist Party of the United States, so far as your experience goes, so far as your reading goes, clearly interprets and construes Marx as set forth in his writings?

A. I would say, as far as Mr. Browder's writings are concerned, that he backs most of his ideas by definite citations from Marx, which could be taken as literal interpretation of Marx.

Q. Would that hold true with regard, for instance, to some of these other men who have written these books here?

A. I don't know what other men you mean.

Q. Well, Lenin?

A. Lenin, of course, definitely claims unity with the Marxian theory.

Q. Take the "History of the Communist Party of the Soviet Union": I think you said you have read that?

A. I have read most of it.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Does that reflect Marxism, as you understand Marxism?

A. It reflects the Lenin interpretation of Marxism, certainly, as that has been applied and used in the Soviet Union.

Q. And is that true of "Foundations of Leninism," by Josef Stalin? [322] A. Yes.

Q. And the "Problems of Leninism," by Joseph Stalin as well?

A. Those are accepted, I think.

Q. They correctly interpret or construe Marx, according to your——

A. (Interrupting) Correctly, according to the Communist Party's interpretation. I am not offering my testimony on the correct interpretation of Marx.

Q. Well, you have studied Marx, of course?

A. I have read Marx, of course.

Q. And you have read Lenin? A. Yes.

Q. And you have read Stalin? A. Yes.

Q. And all these others?

A. Yes. But if you are——

Q. (Interrupting) Just a minute, please. Do you see anything inconsistent in these constructions or these interpretations of Marxism?

A. No; it seems to be a perfectly good interpretation.

Q. In each instance?

A. Yes; but that is not saying it is the only

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

possible interpretation. It is a perfectly good interpretation.

Q. But it is, so far as your mind goes, consistent with the teachings of Marxism——

A. (Interrupting) I should think so.

Q. —as stated by Marx himself?

A. I should think so.

Q. Could you visualize a party calling itself Marxist in theory, and at the same time directly engaging in and advocating force and violence to attain the same objectives as Marxism?

A. Of course, one can imagine most anything. I don't think my imagination is worth very much.

Trial Examiner Landis: I think the point is whether or not the party advocating the overthrow of the government by force and violence would be out of line with the Marxist philosophy.

The Witness: I think it would be.

By Mr. Shoemaker: Q. According to your interpretation?

A. Yes, according to my interpretation, it would be. [323] Accordng to any reasonable interpretation.

Q. All right, sir. Again I shall read you a few of the excerpts from these books, and see whether you place the same interpretation as I do on them. Assuming that Marx did not advocate force and violence, but simply force or violence, as an inevitable result of the class struggle, how would that prove that the particular modern group known as

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

the Communist Party does not advocate force and violence?

A. That statement alone would not prove it.

Q. What would prove it?

A. You would have to know the activity and writings, expressions, of the party that called itself "Communist."

Q. And come to an understanding of the proper construction to be placed on the words of that Communist Party; is that correct? A. Yes.

Q. A mere label wouldn't mean anything to you, so far as the Party was concerned, would it?

A. What?

Q. If the party, for instance, was called the Communist Party of the United States, it wouldn't mean anything in particular to you, would it?

A. Why, the Communist Party of the United States would mean something different than the Communist Party of England or the Communist Party of Germany.

Q. Well, would you think, then, that the Communist Party of the United States were an organization representing the Communist theory, or Marxist theory, in the United States?

A. Yes, as applied to conditions in the United States; that is where the difference would be. That is the reason I made that qualification that is in line with the Marx-Engels theory. It would be the business of the Communist Party of every country

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

to analyze the situation in that country in Marxian terms.

Q. In your writings and in your—I mean, in your readings, rather, Professor, have you ever reached any conclusion as to whether or not the Communist Party of the United States is related or [324] connected in any manner, shape or form with the Communist Internationale?

A. I think it must be.

Q. What is that?

A. It must have some connection.

Q. Why?

A. The little I know about the organization, I have seen the statements of the organization,—the Party statements of th rganization.

Q. Well, do you interpret those statements to mean that the Communist Party of the United States is connected or related to the Third Internationale?

A. It would be affiliated, of course, wouldn't it? Isn't that what Mr. Browder states?

Q. Well, really, I would rather get your expression, your view, with regard to it.

A. My statement depends on my memory of his statements.

Q. Do you believe that the Third Internationale controls the Communist Party of the U. S. A.?

A. Controls?

Q. Yes. A. No; not in a full sense.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Do you believe that the actions of the Communist Party of the U. S. A. are subject in anywise to the control of the Third Internationale?

Trial Examiner Landis: I wonder, Mr. Shoemaker, in this connection, as to whether or not it is worth while getting this witness's opinions on these points. He hasn't qualified himself as an expert in the tactics of the Communist Party.

Mr. Shoemaker: Well, our position, if your Honor please, is that they are all connected. He is a gentleman that has qualified himself as an expert, and I want to know whether my interpretation is the same as his, because, I presume, being an expert, he knows considerably more than I do, and I want to get his reaction as to what the Third Internationale has to do with the Communist Party of the United States. [325]

Trial Examiner Landis: Well, I certainly wouldn't accept his qualifications as an expert on Communist tactics and Communist organization. I don't think that particular qualification has been made.

Mr. Shoemaker: Well, the gentleman qualified himself as an expert on Marxism.

Trial Examiner Landis: Yes, on Marxist philosophy and history.

Mr. Shoemaker: And the Government's contention in that connection is this: that the Communist

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Party is definitely connected and related to the Third Internationale.

Trial Examiner Landis: I understand that.

Mr. Shoemaker: Therefore, if Leninism and these other expressions in the books here represent the true Marxist theory, then Marxism is not merely national in scope but it is international in scope and worldwide, and therefore the relationship of the Communist Party of the U. S. A. to the Third Internationale is pertinent to the Government's position and the witness should be questioned with regard to it, because he is an expert on Marxism. Now, do I make myself clear?

Trial Examiner Landis: Well, I have no question but that the Government's position, to-wit, the relationship of the Communist Party of the United States of America to the Communist Internationale is an important thing. That seems to me a problem upon which someone in the field of political science or somebody in the field having a knowledge with reference to Party organization—someone like that could best answer. Now, this man's qualification relates to philosophy, primarily the philosophy of history, and the philosophy of history as being the basis for what might be called the Marxian and Lenin guide to action, which is a broad general guide. His own admissions to the effect that he has read these books from a philosophic standpoint, and not with the idea [326] of trying to find out what

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

the Communist Party of the United States or the Internationale, or the Communist Party in Russia, what its tactics are, how it is organized, what the responsibilities of the various groups within that are—he, I think, admits no knowledge on those points. Now, I am just wondering about the worthwhileness of any answer he might make in that regard. Not that I don't say it is important for you to get answers to those questions, but my point is that this witness's answers on those points I don't believe carry much weight.

Mr. Shoemaker: Let me state my reasons for asking him, your Honor. Marxism knows no geographical limits. Marxism, as stated by the witness, is a growth; a growth in human understanding of those things which are necessary to the advancement of human beings. Now, if in one country they have something which is labeled Communism and they have in the next country something labeled as Stalinism, and they have something in another country labeled as Leninism, the position of the Government is this: that these labels account for little or nothing. We go back, then, to the primary thing that is under consideration: Marxism. This witness, again I state, has qualified himself as an expert on Marxism. Marxism is a science, he states. If Marxism is a science and, as I stated, there is no geographical limit, then, I think it is perfectly proper to show this relationship by this witness of

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Communism in this country, whatever label it may bear, to Marxism; because Marxism, again, is international in scope.

Trial Examiner Landis: I am afraid you don't get my point.

Mr. Shoemaker: Maybe I don't.

Trial Examiner Landis: Let me express it again.

Mr. Shoemaker: All right.

Trial Examiner Landis: From the standpoint of whether or not the Communist Party of the United States of America is Marxist [327] in conception, Marxist in doctrine, Marxist in approach, this witness feels competent to testify. I think he has the necessary preliminary qualification to make him an expert in that field. But when it comes down to just how the Party organization of a certain Party is set up, and the responsibility of that Party to the Third Internationale, this witness hasn't even read the Constitution of the Communist Party of this country. Now, whether or not that constitution represents the fact is something that I don't know and I wouldn't argue, but certain documentary material of that type, plus some knowledge of Communist organization in this country would be essential for this witness's answers to have any merit at all on that point. I don't want to stop you in any sense in questioning with reference to those matters——

Mr. Shoemaker: I realize that, your Honor.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Trial Examiner Landis: —in regard to those matters on which I think it is important to question, but I am just suggesting that the witness's answers on those particular points have no merit.

Mr. Shoemaker: Well, your Honor will recall that I asked him some questions back there with regard to the reasons which led to the formation of the Third Communist Internationale, and I think the Professor stated that he knew something concerning that. Well, if he knows something concerning the formation of the Third Internationale, certainly he must know something about whether or not the Communist Party of the U. S. A.——

Trial Examiner Landis: Well, I don't think he pretended to know what he does know about the organization of the Third Communist Internationale as an expert. You asked him if he knew something about it. I imagine almost anybody would know something about the organization of the Third Internationale, and I gather that the Professor's knowledge on that point is very indefinte, that in no sense was there a pretence of being an expert in that [328] field.

Mr. Shoemaker: I shall not proceed any further. I seek no advantage at all; I simply want to know what the gentleman knows, and if you think I shouldn't, I am perfectly willing to drop it. I am willing to drop that line.

Do you want to adjourn now, your Honor?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Trial Examiner Landis: Yes, I think we might as well.

(Whereupon, at 12:05 P. M., a recess was taken until 1:30 o'clock p. m.) [329]

Afternoon Session

HAROLD CHAPMAN BROWN

recalled.

Cross Examination

(continued)

By Mr. Shoemaker: Q. Professor, I think you stated before we adjourned that you knew that there were several schools of thought with regard to Marxism? A. Yes.

Q. Or Leninism. Do you know what school of thought prevails in the Communist Party of the United States?

A. Why, I think the line I have taken prevailed. I have tried to, as far as I know, follow the line that prevails, because I thought that was the interesting thing on this occasion.

Q. As set forth in your article? A. Yes.

Q. Clearly believing that there is no force or violence contemplated by the Communist Party of the U. S. A.?

A. I would say not from Mr. Browder's writings.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. After all, that is only one expression of opinion,—Mr. Browder's writings.

A. Mr. Browder?

Q. Yes.

A. Well, I suppose that as secretary of the Party of the country that he would be expressive of their views.

Q. He is what?

A. As secretary of the Communist Party—isn't he?

Q. Yes.

A. Leader of the Party in this country, I suppose his writings would be expressive of their views. He says, I believe, in the introduction of the—in the preface to the "United Front," at the end of it:

> "This book, like its predecessors, is in a broader sense a collective product arising directly out of the work of the Central Committee of the Communist Party and its political bureau."

Q. Then, if it appeared in any of his books that force and violence might have been contemplated by the Communist Party, that would be persuasive to you, I take it?

A. It would be persuasive to me.

Q. Would you say that the present regime in the Soviet Union came [330] into power by force and violence or without force and violence?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. There certainly was violence of the coming into power of the present regime.

Q. Will you tell us in what way the social and political periods of Marx and Engels differed from the existing republican monarchists' views of their period? A. Of their period?

Q. Yes—the periods of Marx and Engels. You can group them as a pair, if you wish.

A. Yes. Roughly, of course, democracy as over against the autocracy of the monarchy.

Q. Will you consider them also in connection with Germany and France?

A. Well, of course, in Germany you had the monarchy and certainly not the monarchial form of theory. In France, of course, you had what they called the bourgeoisie republic which is, again, not a proletarian republic.

Q. Do you regard——

A. (Interrupting) That distinction is very sharply drawn.

Q. You say it is sharply drawn? A. Yes.

Q. So sharply drawn that I am afraid I didn't get it. The bourgeoisie government which prevailed in France at that time was so vastly different, I take it, from what may be regarded as the democratic form of government in the United States today; is that correct?

A. I was wondering how different—Yes, there was a difference.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Sufficient, for instance, to warrant the establishment of the Marxian theory in France?

A. The Marxian theory goes independent of the form of government existing, doesn't it?

Q. Yes. I say, would it be sufficiently different to warrant the establishment there in France of the Marxian theory of government?

A. Yes; very definitely.

Q. You think it would have been a good plan to have adopted it there in France?

A. I didn't say I think it would be a good plan. [331]

Q. I am asking you now: do you think it would be a good thing to have it adopted in France?

A. To have adopted the Marxian theory in France?

Q. Yes.

A. I don't know as I would be qualified to say whether it is a good thing or not, to adopt it.

Q. Well, do you think it would be a good thing to have adopted it in the United States at the time *of* the Marxian theories were advanced, first advanced?

A. No, no, it would be an impossible thing to do, from the Marxian theories themselves.

Q. Do you think it would be a good thing to adopt the Marxian theories of government today in the United States?

A. It couldn't be done possible. Again, by the Marxian theory itself.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. That is one of the things that we are concerned with, very much, as to whether it can be done, Professor. I think the Communists believe it can be done and are working to that end.

A. Immediately? No.

Q. Within the very near future, if that is possible to attain it.

A. Well, how near the future, of course, depends on, in the Marxian theory, what happens.

Q. So far as our experience and our investigations show, *it* wouldn't have any hesitancy in putting it into effect tomorrow, if the thought they could put it into effect. Whether or not they can is open to question.

Q. Well, of course the conditions for putting it in effect—one condition would be a development of a large part of the population or a majority who wanted it, which we haven't.

Q. You feel that we don't have that in this country now? A. Certainly not now.

Q. If either Marx or Engels advocated the establishment of the dictatorship of the proletariat, will you tell us in what manner they advised adopting it or establishing it?

A. Of course, by the [332] theory the method of establishing it in every country and every time varies. I gave the one passage from the Grundsatze, where Engels, in a general sense, states the possibility where it might come about. As far as I know,

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

that is the only statement that is not limited to special conditions, and Engels afterwards qualifies that as not a great weight because the special conditions are called for.

Q. In other words, conditions control at all times? A. Conditions control at all times.

Q. I think you have said that the writings of Marx,—they were dealing with the philosophy that has not become known as Communism; is that correct? A. Yes, I think so.

Q. And were hardly dealing with any other philosophy at all, were they?

A. Only in a critical way.

Q. I understand. You mean, by that, that in so far as the capitalistic philosophy——

A. (Interrupting) They felt the importance of a clearcut ideology and contested all philosophies that seemed to be an opposed ideology.

Q. Do you understand that there is any difference between the dictatorship of the proletarians and the dictatorship of the Communist Party?

A. Very definitely.

Q. Very definitely?

A. Yes. The proletariat is a very much larger group than the Communist Party, and as far as I know there has never been any suggestion that the Communist Party would include all the Proletariat.

Q. You think there will be such a thing as the dictatorship of the Communist Party?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. I am not a seer; I can't make predictions.

Q. You certainly must have some viewpoints with regard to whether or not there will be any class distinctions after the transition period of the rule or dictatorship of the proletariat?

A. If the transition into socialism would be made, it would the very nature [333] of the case—from the very nature of the case it could not be class distinction——

Q. (Interrupting) Yes, you say "if it is." Suppose it isn't? A. Suppose it isn't made?

Q. Yes. Suppose, for instance, you had the transition period, or the so-called transition period of the dictatorship of the proletariat, and then you never came to the realization that the Communist Party then is in control or that class distinctions are levelled and there are no such things; then where do you land? You are to continue on in the dictatorship of the proletariat or not?

A. Of course, it is the object in Marx' and Engels' philosophy for the dictatorship of the proletariat to be an instrumentality for continuing class struggles until socialism is built up, when, of course, it stops.

Q. Yes, I can understand that; but suppose it isn't built up? That is what I am trying to get from you now.

A. Well, if it isn't built up, then I suppose it will go on until it did.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Go on with the dictatorship of the proletariat? A. Until it did.

Q. Then suppose it didn't: then what?

A. Then it wouldn't.

Q. Are you to continue on with the dictatorship of the proletariat or the rule by——

A. (Interrupting) I am not predicting anything, because I don't know that the dictatorship of the proletariat will——

Q. (Interrupting) What is your opinion as to what will happen? A thing isn't always realized when it is started out to be accomplished, is it?

A. No.

Q. Well, then, it is very possible to visualize a state of society when the dictatorship of the proletariat either must continue in office or get out. In other words, the dream or the hope of the Communist Party is not going to be realized: then, where do you land? Is the class——

A. (Interrupting) If you want me to [334] falsely——

Q. (Interrupting) Is the class rule to continue?

A. If you want me to make a prediction, my prediction would be that if the dictatorship of the proletarian class will not succeed in accomplishing its purpose, it eventually would be destroyed and pass out like anything else.

Q. That is what I want to know.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. That is only my personal opinion, however.

Q. After all, that is all I was asking for.

A. Surely.

Q. You know there was a split in the ranks of the social democrats about 1905, during the Russian Revolution?

A. Yes, I have some vague idea of it.

Q. But you don't know——

A. (Interrupting) I don't know anything about it.

Q. Did you know that the reason for it was because there was a difference of opinion as to whether or not force and violence should be used?

A. I know there have been such differences of opinions, and they have caused splits.

Q. Do you know whether that obtained in the Russian Revolution of 1905? A. I don't know.

Q. Do you believe that the socialization of all of the means of production is possible?

A. Is possible?

Q. Yes. A. I think it is possible.

Q. Do you think it is probable?

A. I feel doubtful about it. I shouldn't like to say that. Again, "probable" is a very vague word and I am afraid of using it.

Q. Do you know what effect the writings of Joseph Stalin have on the international Communist movement?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. Why, I imagine they are used as documents giving information and reporting experience, and possibly giving advice that should be considered in making any decision. [335]

Q. I think you said they were a follow-through of Leninism; is that correct? A. Yes.

Q. Do you believe that there is any subterfuge or any hidden meaning in the written works of Marx, Lenin and Stalin?

A. No; I don't, honestly.

Q. You don't believe there is any at all?

A. I don't think there is any subterfuge.

Q. Do you believe that they are susceptible of more than one construction?

A. It is almost impossible for any human being to write in such a fashion that his writings are not susceptible to more than one construction. I cannot do it myself and I have never seen anybody that could do it.

Q. Then it is possible for, let us say, the two of us to differ on what is intended by a philosophy, expressed or written, by either of these gentlemen?

A. It is possible, under some circumstances.

Q. Well, I am going to read you now from "What is Communism?" by Earl Browder, and after that I am going to ask you some questions and I wish you would listen closely.

A. I think I have a copy of it.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Look at pages 163 and 164—Take 163 first, Professor. A. All right.

Q. It reads: "The transfer of state power from the capitalist——"

A. (Interrupting) Which paragraph?

Q. It reads: "The transfer of state power from the capitalists to the working class——"

A. (Interrupting) Page 163?

Q. I am reading from "What is Communism?"

Mr. Grossman: Probably there are several editions.

Mr. Gladstein: It may not be the beginning of a paragraph. It may be in the middle of a paragraph.

The Witness: I am looking for that paragraph. [336]

Trial Examiner Landis: How does it start?

Mr. Shoemaker: "The transfer of state power from the capitalists to the working class——" It may be that I had an older book. I made these questions up back in Washington before I left there.

The Witness: What is the chapter about?

Trial Examiner Landis: Here it is (indicating,) on page 125.

The Witness: I have it here.

By Mr. Shoemaker: Q. It reads:

> "The transfer of state power from the capitalists to the working class, which begins the social revolution, can be accomplished only un-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

der certain conditions which have an objective existence independent of the desires of the struggling classes. There must be what we Communists call 'A revolutionary situation'."

Did you get that? A. Yes.

Q. (Continuing reading) "In this revolutionary situation, the Communist Party——"

A. (Interrupting) Where are you skipping to now?

Q. The next page in that book:

"In this revolutionary situation, the Communist Party, which has won the active support of the majority of the working class and of the decisive sections of the other exploited classes, wins some of the armed forces to its side, and leads the effective majority of the population to the seizure of state power. There can be no such first step if there is no revolutionary situation, or if the Communist Party has failed to rally the support of the majority of the population. After this first step of taking state power has been realized, the workers make use of the state power to take possession of the instruments of production."

I want to ask you now, Professor, whether you think that the revolutionary situation to which Mr. Browder refers is one wherein force and violence

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

are not contemplated, and what do you think [337] of that method of settling our problems?

A. I think that part should be continued from where you left off.

Q. I will read the whole thing if you want.

A. It is just a sentence here, if you will permit it:

> "Such a situation develops when the ruling class can no longer dominate society in the old way; when the economic system breaks down and can no longer feed the masses; when the middle classes are wavering and a considerable part have turned against the rulers; when the capitalists themselves have lost confidence in their ability to solve their own problems; and when capitalist control of the armed forces of the state has been undermined and shaken."

In that kind of a revolutionary situation you meet a phase of breakdown in which conflict is likely to ensue, and then I see nothing inconsistent with the Marxian philosophy in what follows.

Q. Don't you think force and violence are contemplated there?

A. They are predicted when that situation occurs, and they are contemplated when that situation occurs, in the sense that Mr. Browder says that situation occurs.

Q. He says it very carefully——

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. (Interrupting) Then force and violence will be called for and, in a sense, is contemplated or predicted, and *is* certainly an intelligent preparation should be made for the use of it under this situation; but, again, as an escape from chaos because a condition depicted there would be chaos. When the ruling class can no longer dominate the people and they cannot feed the masses, what are you going to do?

Q. Here—"After the first step of taking state power has been realized, the workers make use of the state power to take possession of the instruments of production——"

A. (Interrupting) Certainly.

Q. (Continuing) Up above it refers to "armed forces" and "seizure." A. Yes.

Q. What does "armed forces" bring to your mind?

A. Armed forces. [338]

Q. Exactly. (Laughter)

Mr. Shoemaker: That is funny, isn't it?

Q. What does "seizure" bring to your mind, the bringing along of, sweetly and gently asking for a chocolate eclair, with it? A. No.

Q. It means just what it says, doesn't it?

A. Certainly.

Q. Mr. Browder states: ". . . wins some of the armed forces to its side—" meaning the Communist Party. It doesn't say all of the armed forces, but

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

some of the armed forces. ". . . and leads the effective majority of the population to the seizure of state power.

A. Effective majority of the population; yes.

Q. Do you think Mr. Browder believes that the state power can be seized in any other manner than by force and violence?

A. He believes probably it will not be, if he follows Marx and Engels.

Q. He feels that armed forces and violence will not be used?

A. No—Ask me the question again, please.

(The question referred to was read by the reporter as above recorded.)

A. Not in that kind of a revolutionary setup.

By Mr. Shoemaker: Q. I want to go on—you have the book before you.

"All revolutions have been made with weapons which the overthrown rulers had relied on for their protection.

"History does not show a single example in which state power was transferred from one class to another by peaceful means, whether in the form of voting or some other method of formal democracy.

"Communists, despite what their enemies say, do not advocate or idealize violence. A violent struggle with the capitalists is by no means our choice or preference. We know only

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

too well the terrible price workers have to pay as a result of the violence employed by the capitalists against them every day. We would be only too delighted if the capitalists would voluntarily scrap the deadly [339] weapons which they use against the population at home, and which they are piling up in unprecedented quantities for a second world war. But we would be more than fools, we would be criminals, if we did not warn the toilers that capitalists will not peacefully submit to the dictates of history."

Do you think force and violence is contemplated by Mr. Browder?

A. That it will occur, yes; that it will occur; but not, of course, force and violence started by the Communist Party.

Q. Whether started by whomsoever, it is there as force and violence? A. Yes.

Q. Reading further: ". . . if the productive forces——"

Trial Examiner Landis: Page 129, the third paragraph.

Mr. Shoemaker: (Continuing:)

". . . if the productive forces and accumulated wealth of society are to be preserved and further developed, the property rights of the capitalists and the institutions by which they

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

are maintained must be abolished and the exploiting minority and its agents suppressed. Thus, some form of violence is unavoidable. There is no possible choice between violence and non-violence. The only choice is between the two sides of the class struggle."

Do you think force and violence is contemplated by Mr. Browder after hearing that?

A. Predicted by Mr. Browder.

Q. Do you think it is contemplated?

A. I don't think it is contemplated in the sense other than it is predicted.

Q. In other words, if Mr. Browder doesn't have his way, or if the Communist Party doesn't have its way, then we may avoid the possibility of bloodshed; is that the idea?

A. I think that is quite correct. In Marx' philosophy of history you get this kind of a situation Mr. Browder refers to. Then, as Laski would say, in his "Rise of Liberalism," in the face of what happened from the Middle Ages from the domination of the church to the feudal system, and [340] the feudal laws didn't yield, and there was established a monarchy, and if it didn't peacefully yield there was established a parliamentary government; and if the parliamentary government did not yield then to follow the same line, there would be the establishment of a socialistic government.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Well, do you think it is reasonable to expect that they might yield under the circumstances?

A. It probably wouldn't be reasonable.

Q. Then, only force and violence is contemplated to solve the problem?

A. If the breakdown is inevitable, force and violence must follow in making the transition.

Q. It isn't any question about background; it is a question of a made proposition. They do not happen; they are made, and that has been stated and I will quote that after a while, too.

Q. Yes, made at a certain time and under situations—a revolutionary situation.

Q. Exactly. Made because the other fellow won't yield that to which he may feel he is entitled, isn't that possible,—that construction?

A. That is possible,—that construction; but of course that is also a pretty democratic construction, for when the majority passes a law in democratic government the minority has to yield. If they don't yield, they are forced to yield.

Q. That is just the point that I am getting to. That would hardly be considered in conformity with Christian ideals and customs and standards, would it?

A. It certainly is historically true, and is true in a contemporary situation. That is, if a man in America feels it is right to go and take anybody's property he wants, the law says he can't do it.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

When people do not conform to the laws of the country, the country exerts force and violence to prevent them from breaking the law, if necessary.

Q. Only when a certain condition obtains which they think warrants [341] their action?

A. Yes.

Q. But if the majority of the people think that those conditions do not obtain, and their action is not warranted, they still think they have the right to go ahead under those conditions?

A. No, for they have definitely said that they must obtain the backing of the majority.

Q. And they said they had a right to move without the majority, and then convert the majority to their view?

A. Not without the sympathy of the majority.

Q. What is that?

A. Not without the sympathy of the majority.

Q. The sympathy of the majority doesn't enter into the question. The question is: who are these people who are proceeding; are they in the majority or are they in the minority, or are they one class or more than one class?

A. The proletarian group.

Q. The proletarian group; all right. Well, even the proletarian group might not be in the majority?

A. Might not be.

Q. The petty bourgeoisie and the vested interests, for instance, might be in a majority?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. They might be, yes.

Q. And possibly they are. And that is contemplated by the Communist Party, as stated in the other stuff I read to you this morning, and I think you admitted that was possible?

A. Of course, the efforts and tactics of the Communist Party as laid down by Mr. Browder is to try to win a majority.

Q. All right. But if you don't win the majority, he says there is no possible choice between force and violence——

A. (Interrupting) In the long run. In the long run, you have got to win the majority, is one of his theses.

Q. No; I don't believe that for one minute. He says that there is no possible choice between violence and non-violence; the only choice is between two sides of the class struggle, and this class struggle is bound to ensue. A. Yes. [342]

Q. And that when this condition reaches what you call chaos, or what the Communist Party might call chaos, then this individual class steps in and persuades the majority to come to their view. But they haven't yet persuaded the majority to come to their view.

A. But they haven't yet started a revolution.

Q. But they have; that is the point I am trying to bring to you; that revolutions do not happen; they are made. A. Yes.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. All right. That is——

A. (Interrupting) Made by what?

Q. Made by the persons who desire to accomplish their aims; the Communist Party, in this instance.

A. That he doesn't say. He said made by the conditions of history.

Q. Now we are coming to more things. Let us—

A. (Interrupting) Mr. Browder accepts the Marxian doctrine of the Kapital for the breakdown of capitalism.

Q. Let us go on. "There is plenty of wealth—" Have you got that? That is on page 61.

A. No; I haven't.

Trial Examiner Landis: The pagination of your excerpts seems to differ with this particular issue.

Mr. Shoemaker: I am awfully sorry about that.

The Witness: I am sorry about that.

Mr. Shoemaker: I have it on page 61.

The Witness: Let us see. Where would that be?

Mr. Shoemaker: "There is plenty of wealth in the country to pay for all of those necessary things."

Mr. Grossman: Are these marked in the books you introduced?

Mr. Shoemaker: No. They were made up by me before I ever left Washington.

The Witness: Do you have any chapter reference there?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Mr. Shoemaker: I am sorry, Professor, I haven't. Well, just forget that one.

By Mr. Shoemaker: Q. See if you can find this one: This would [343] be about—that other was 125 against 169, wasn't it?

A. Yes; about 30 pages.

Q. Well, here I have it on page 123 of the same book. A. How does the statement start?

Q. "We Communists declare, and we have proven it by experience, that only class struggle policies can bring victories."

A. Is that all of it?

Q. No; there is a whole lot more to it there.

Trial Examiner Landis: You can listen to it.

Mr. Shoemaker: Suppose I read it to you——

The Witness: I will listen to it carefully.

By Mr. Shoemaker: Q. Well, let us go back to that other one, because I would like to get these questions in. I think they are very pertinent to this matter, but you may not think so.

A. I think they are.

Q. Mr. Browder states:

> "There is plenty of wealth in the country to pay for all of those necessary things. But all this wealth is in the hands of the rich. There is no magic formula by which it can be obtained, except by taking it away from the rich. This can be done by taxation, for which the govern-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

ment has full power. If the government refuses to do this, then there is another way, the way pointed out by Lincoln, who declared that when the people became dissatisfied with a government, they have the inherent right to change, or overthrow it, and set up a new one which will carry out their will."

Now, I just wanted to ask you in connection with that, do you think Mr. Browder contemplates the use of force and violence there?

A. Mr. Browder is saying there pretty nearly what Lincoln and Jefferson said——

Q. (Interrupting) I didn't refer to Jefferson.

A. He is referring to what he thought he said. I think he was [344] referring to them, or what he had in mind.

Q. He says "the way pointed out by Lincoln."

A. Yes.

Q. In any event, you don't think that force and violence is contemplated there by Browder?

A. I think if you get a government that is no longer susceptible to popular will in democracy.

Q. To go on:

"We Communists declare, and we have proven it by experience, that only class struggle policies can bring victories for the workers in the day-to-day battles for immediate needs. We reject the idea that collaboration with the bosses will enable the workers to steal a few crumbs. We reject just as completely the idea

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

that the workers must suffer, their conditions must become intolerable, before they are willing to go along the path of class struggle. History has shown that it is upon the basis of these daily struggles for bread that the revolutionary movements is made strong and prepared for the giant task of overthrowing capitalism."

Do you think that he visualizes force and violence there?

A. I think that is a correct application of the Marxian doctrine of capital.

Q. It goes on then:

"It must be emphasized that capitalism will not simply come to an end; it can only be ended by the organized actions of the working class in collaboration with its allies from other sections of the population.

"The revolution does not simply happen: it must be made. This does not imply that the Communist Party 'makes' the revolution. The socialist revolution is carried out by the great masses of toilers. The Communist Party, as the vanguard of the most conscious toilers, acts as their organizer and guide. It gives the masses political awareness of their problems, a realistic program that will solve these problems: the heightened class consciousness of the workers leads them to follow the Communist Party."

[345]

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Do you think that Mr. Browder visualizes force and violence when he wrote that?

A. I think he is visualizing a definite resistance to Fascism.

Q. What is that?

A. I think he is visualizing a definite resistance to Fascism.

Q. A definite resistance?

A. To Fascism, yes.

Q. To Fascism. You think, then, that when he is working in the interests of Communism that he is working along lines which definitely are opposed to Fascism, and have no regard to the democratic institutions under which we live; is that correct?

A. The whole theory is that democratic institutions must be preserved, in order to make possible reasonable progress towards socialism. Possibly an immediate task would be, on that thesis, a resistance to Fascism and saving American institutions.

Q. Do you think you could find where he says that in any book, that the democratic process must be maintained?

A. You will find statements in all these Marxist writers, so many times, that democracy is the nearest approach to the dictatorship of the proletariat.

Q. Democracy as he construes it——

A. (Interrupting) Well, the rule of the majority; vote of the majority.

Q. And even that is open to construction?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. Of course, you must get a majority among your proletariat groups, workers, of course; that is part of the theory.

Q. What do they mean when they say there that the revolution does not simply happen, it must be made? Do you think that he is talking about some peaceful affair that the Communist Party must work to an end to secure?

A. No; I think he means a crisis will develop, when you have got to take active steps in such ways as you can to prevent the advent of Fascism and to work towards the development of socialism; on the basis of his theory. [346]

Q. If Mr. Browder were a democrat and he were working along democratic lines, why would he have said, "The revolution does not simply happen; it must be made"? Why wouldn't he have said this, or something like this: "This peaceful revolution which we hope can be accomplished should be worked out through the ballot, use of the ballot, something of that kind, because, after all, all of our processes, all of our institutions can be worked in such a manner as to accomplish the good of the whole"? Why didn't he say something like that instead of talking about revolution and force?

A. Because in the light of history he doesn't hope it; he can't hope it. That is, in the Marxian interpretation of history, he can't.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. And if he doesn't hope it, he has definitely in mind there must be a revolution, and there is no hope? A. Yes.

Q. That is the idea?

A. And the revolution will involve force and violence.

Q. And we can't escape?

A. We can't escape.

Q. That is exactly what I think he means.

A. I think he means that.

Q. And he is going to help bring it about as soon as it can happen; it doesn't just happen: it must be made. On page 57 of his book, "The People's Front"—Have you got that book there, Professor?

A. Yes, I have it here. Which page?

Q. 57. Mr. Browder quotes from Lenin, and he states:

> "Lenin told us: 'We must extend the ranks of our army, transfer it from a peace to a war strength, mobilize the reservists, call up all those on furlough, organize new auxiliary corps, units and services. We must not forget that in war it is inevitable and necessary to fill the ranks with left trained recruits, very often to put rank and file soldiers in the place of officers, and to speed up and simplify the promotion of soldiers to the rank [347] of officers."

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Do you think that Mr. Browder was quoting from Lenin with approval, other than in the light of the use of force?

A. I would just like to read to myself the first paragraph, if you don't mind, to see the connection.

Q. All right; go ahead.

A. The sentence before it, I think, is important: "We are in a revolutionary epoch, which Lenin says is to the Communist Party what wartime is to an army."

This statement is, then, figurative in that respect.

Q. Figurative? A. It would mean——

Q. (Interrupting) You would not say——

A. It would mean strengthening the ranks of the Communists, gaining more members, mobilizing the people who would be sympathetic, and that sort of thing. I think it is a general figurative statement, in light of that previous statement. Lenin may have been talking militaristically; Browder is applying it, in this case, in a figurative sense.

Q. He wasn't talking figuratively when he referred to war, was he? That isn't anything figurative; that is actual?

A. Well, it says a class war. Certainly class war is war in that sense.

Q. You don't think he is talking about a class war there, do you?

A. I think Browder has that in mind. In part of the next paragraph, too, where he says:

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"We must guide great recruitment in our beginning for new members to especially strengthen the workers in our forces."

Q. Then you think that when he talked about war and when he talked about soldiers, that he was talking figuratively and in the class war, and not of a conflict where force and violence might be used?

A. My reading of that now would be that he was considering mobilizing the resources of the Communist Party for use in the class struggle in such days as are now present and as might develop.

Q. All right, let us go on. Page 57 and 68 of "The Peoples Front."

"The democratic platform——"

Have you got that? A. Yes.

Q. "—takes a gratuitous fling at the 'despotism of Communism.' [348] It would have been the part of wisdom, not to speak of good taste, at least to be silent on this point, when the same platform complains that our American institutions are defeating the expressed will of the people, through the Supreme Court, at a moment which Communism in the Soviet Union has just proclaimed a constitution, the most democratic in all history, which guarantees to every citizen a job at union wages, with full social insurance, paid vacations and opportunity for education, leisure and culture. When

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

America, the richest country in the world, gives *it* workers half of what Communism gives in the Soviet Union, it will be time to boast."

Do you think Mr. Browder in that connection was suggesting the establishment of the practices of the Soviet Union in the United States, as opposed to our democratic institutions?

A. As an eventual outcome, yes.

Q. What is that?

A. As an eventual outcome.

Q. Now, the present, wasn't he advocating—he says it comes with poor grace at this time, when he says they have so and so and we have nothing, practically?

A. It is poor taste now to take the democratic platform to draw——

Q. (Interrupting) You construe it——

A. (Interrupting) I mean, according to his belief, there is no despotism for Communism in the Soviet Union. I don't know anything about the Soviet Union, or enough to know about the situation, but it is his belief——

Q. (Interrupting) Well, he refers to it, anyhow?

A. Yes. It is his belief definitely that the Soviet Union has the highest democracy in the world; he says that again and again.

Q. You think he is talking about the future, not of the present? A. Very definitely.

Q. All right. Let me quote from pages 113 and 114 of the "People's Front," by Mr. Browder. [349]

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"Today a far greater crisis confronts the American people. We Communists are confident that they will meet and solve it in the same spirit the American people solved the crises of 1776 and 1861. We communists are proud that we can truly say that Communism is the Americanism of the 20th Century, that in the great struggles to come the Communist Party will carry forward with the revolutionary traditions of the past to a better and more secure life in the present, and to a future of peace, freedom, happiness and prosperity for all."

Do you think Mr. Browder was talking there about a peaceful revolution, in view of his reference to 1776 and 1861?

A. No; he was referring—I read the previous paragraph—to the fight against the reaction of the American people, and he is anticipating the reaction going to the point of moving toward Fascism, and the development of resistance of the American people against Fascism to preserve democratic rights. That may be correct or incorrect, but it is an interpretation of the contemporary situation in America.

Q. You think, then, that Mr. Browder was building up some kind of a party on the other side of the fence, or around the corner of the fence, as distinguished from the democratic side as the average American regards it in opposition to the Communist Party; is that the idea?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. I think he was developing—wants to develop a democratic front to meet Fascism and to go to any limits to prevent Fascism from coming to America.

Q. Do you think, then, that the Communist policy is the democratic front?

A. I think the Communist policy is to unite in a democratic front against Fascism.

Q. You think, then, that the question of Fascism is the controlling thing in the philosophy or in the understanding of Mr. Browder, when he refers to Communism; is that the idea?

A. It [350] seems to me in Mr. Browder's radio speeches, some of which I have heard at election time——

Q. (Interrupting) But in this connection, Professor——

A. (Interrupting) —in election time, he also had the slogan, "A choice of Fascism over Democracy." I think it is part of that same policy.

Q. Then, you think that is what he is referring to,—Fascism,—and not our American democracy?

A. I do.

Q. On page 141, Mr. Browder states:

> "Everyone recognized that the Communist party was an exceptionally effective striking force precisely because of its conviction and clarity, its drive and units. That is another of the hallmarks of Bolshevism.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"Can anyone deny that in this campaign the Communist Party broke through and smashed the legend of our enemies that our party is something foreign, imported from abroad, not organically a part of the American political scene? No one can deny that we thoroughly established our party as an American party, that our slogan—'Communism is 20th Century Americanism'—registered deeply with the American people. This was a great achievement. This is also a sign of Bolshevism."

Do you believe that the Communist Party is 20th Century Americanism, or wasn't he just vaporing?

A. He was referring, of course, there, to the elections and the support of the democratic body in the elections as against the Republican Party, which, again, he believed to be Fascist; and he believes Americanism to persist against Fascism. Now, whether you call that 20th Century Americanism or not—that is a slogan.

Q. I think you stated a while ago as to whether you had any impression as to whether that 20th Century Americanism would be a good thing for the United States, didn't you? You had your doubts, [351] I think you said, didn't you?

A. Americanism is a good thing for us.

Q. Oh, yes, absolutely; but this 20th Century Americanism of Earl Browder's?

A. I would say a democracy is a good thing for the United States.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Would you say Communism is a good thing for the United States?

A. If Communism is honestly supporting democracy and in support of the democratic front, it would be a good adjunct.

Q. I think we all would think that, without doubt. But we say that Communism doesn't support democracy. We say that Communism goes down a strange alley, an alley inconsistent with our American ideals, heritage and customs; that is what we are trying to find out.

A. I know that is said; but I don't think that is consistent with Mr. Browder's statements.

Q. I don't see anything consistent in Mr. Browder's statement that his 20th Century Americanism, in the light of what has been read to you before and what will be read to you hereafter, as I believe you, after a while, will admit, anyhow. Let us go on. "A Letter to American Workers." Is that in the exhibits?

Trial Examiner Landis: That is one of the exhibits; that is Lenin's letter.

Mr. Shoemaker: Yes.

Q. Page 15, Professor. "He is no revolutionist—" Do you find it? A. Page 15?

Q. Yes, sir. A. Yes.

Q. "He is no revolutionist who would 'permit' the proletarian revolution only under the 'condition' that it proceed easily, smoothly, with

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

the coordinated and simultaneous action of the proletarians of different countries and with a guarantee beforehand against defeat; that the revolution go forward along the broad, free, direct path to victory, without the necessity sometimes of making the [352] greatest sacrifices of 'being in wait in beseiged fortresses,' or climbing along the narrowest, most impassible, winding, dangerous mountain roads—he has not yet freed himself from the pedantry of bourgeois intellectualism, he will fall back again and again into the camp of the counter-revolutionary bourgeoisie."

Would you give me your construction of that?

A. Well, of course, this is Lenin writing to American workers, isn't it?

Q. Yes, sir.

A. Yes; and of course he is pointing out things from his point of view. Now, the phrase "Permit the proletarian revolution only under the condition that it proceed easily, smoothly," is of course simply to expect things to happen without doing anything; it would be along the line of the other wing of the Leftist Section, that we spoke of this morning there; that of course Lenin's own doctrine of different developments in different countries means, of course, you couldn't have coordinate and simultaneous actions of proletarians in different countries.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

And of course, there can never be a guarantee beforehand against defeat. I think that is all consistent with the Marxian philosophy.

Q. What do you think he means when he says "has not freed himself from the pedantry of bourbeois intellectualism"?

A. I am very sure that phrase means—that is part of the philosophy; that means very definitely that he doesn't cling to a set of concepts of priori, but would expect to derive concepts from experience.

Q. In other words, don't be intellectual and think you can accomplish anything?

A. No; but don't let your concepts be frozen; but recheck by experience, in the light of experience. That is what that phrase means.

Q. Let me read you some more from that same book, on page 16: "Generally speaking, such 'accusers' limit themselves—" Did you get that?

A. Yes. [353]

Q. "—to a verbal recognition even when they do 'recognize' the class struggle, but in deeds they revert again and again to the Philistine Utopia of 'conciliation' and 'collaboration' of classes. For the class struggle in revolutionary times has always inevitably and in every country taken on the form of a civil war and civil war is unthinkable without the worst kind of destruction, without terror and limitations

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

of formal democracy in the interests of the war. Only suave priests, be they Christian or 'secular', parliamentary or parlor socialists, are unable to see, understand, and feel this necessity. Only a lifeless 'man in the case' can shun the revolution for this reason instead of throwing himself into the fight with the utmost passion and decisiveness at a moment when history demands that the greatest problems of humanity be solved by struggle and war."

Would you place any construction on that?

A. Yes. It is the same thing I have been saying over and over again so many times and it is a shame to repeat it.

Q. All right; don't be ashamed about it. You are on the witness stand. You can say it.

A. I thank you. The "verbal recognition even when they do recognize the class struggle, but in deeds they revert again and again to the Philistine Utopia of 'conciliation' and 'collaboration' of classes—" That, on the basis of history, the Marxist theories maintain has never occurred in history; consequently is not to be expected in history. You will notice that, at the end, "throwing himself into the fight with the utmost passion and decisiveness at a moment when history demands that the greatest problems of humanity be solved by struggle and war," that is when you get a situation where war is inevitable, and to be ready to plunge into that struggle.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Doesn't he indicate there that history is right now in the making and that history demands that he jump into the war and fight— [354]

A. He doesn't say at the present moment; no.

Q. Let us see, now.

A. That does not say at any present moment.

Q. "Only a lifeless 'man in the case' can shun the revolution for this reason instead of throwing himself into the fight with the utmost passion and decisiveness at a moment when history demands that the greatest problems of humanity be solved by struggle and war."

Now, let me ask you this: If he wasn't talking about the present, why couldn't he just as well have anticipated that you could work that out in a peaceful, intelligent manner, without force and violence; will you tell me that?

A. On the basis of the Marxian theory, no privileged class gives up its privileges without a struggle. He does believe that we are rapidly approaching, certainly, a condition when it will no longer be possible for the workers of America to have rights and have a condition to live in in order to maintain life; that is his belief about the present situation. In that kind of situation, then one has to be ready to plunge into the struggle. He believes this coming very soon, undoubtedly; it isn't remote future. That is undoubtedly true: that he believes it to be very soon.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Doesn't he, in effect, say just this thing: that a man is a boob who can't see that this thing is right on him right now, and get ready for the struggle and war at once? Otherwise, why in the world would he say anything about struggle and war, if he didn't think that it was inevitable and it was on him right now?

A. He thinks it is inevitable, and he thinks it is going to be very soon, undoubtedly.

Q. He is writing a letter to American workers—

A. (Interrupting) Certainly.

Q. He isn't dealing with a future generation, surely? A. No; not at all.

Q. He is dealing with something pressing and that is likely to [355] take place at any time?

A. I think it is very possible; he believes that it might be likely to take place any moment.

Q. All right. I quote now from page 17 of the same letter. Have you got that? A. Yes.

Q. "The American workers will not follow the bourgeoisie. They will be with us for the civil war against the bourgeoisie. The whole history of the world and the American labor movement strengthens my conviction."

What do you think of that, so far as an indication of what is contemplated by Communism is concerned?

A. I think he honestly believes that when a crisis comes the American workers will not follow the capitalists but will——

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. (Interrupting) Then if a revolution does not happen and must be made, then the Communist Party is working but to the one end: to see not that it happens but to see that it is made, and when it does that we have civil war; isn't that a natural reaction?

A. To see when it comes that we get a socialism. Of course, by civil war, if necessary; that would be part of the doctrine.

Q. Lord, he says it. A. Yes.

Q. He doesn't say anything about a peaceful settlement of anything; he isn't talking about peace; he isn't talking about the everyday life in America that we have. He is talking about something that involves violence, bombs, guns, men going to destruction, and everything of that kind?

A. Yes.

Q. Isn't he?

A. Yes; but if you will notice the previous paragraph again——

Q. Yes; I read that whole thing over and over.

A. All right.

Q. And I couldn't reach but the one conclusion, I am frank to say. Now, let me go back to another book.

A. Would you mind reading that previous paragraph?

Q. Suppose you read it. [356]

A. "Representatives of the bourbeoisie understand that it was worth letting the country go

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

through long years of civil war, the abysmal ruin, destruction and terror which are connected with every war for the sake of the overthrow of Negro slavery and the overthrow of the rule of the slave-owners. But now, when we are confronted with the vastly greater task of the overthrow of capitalist wageslavery, the overthrow of the rule of the bourgeoisie, as well as the socialist-reformists, frightened by the bourgeoisie and shunning the revolution, cannot understand and do not want to understand the necessity and the legality of civil war."

Q. And then what follows? And then his interpretation over here. Now, whether that is right or not, I don't know. His interpretation is that wageslavery is getting to be analogous to slavery in the south.

Q. I am just trying to see if I can't cut this down. You have read "Left-Wing Communism," did you say? A. Yes.

Q. And "Infantile Disorder"?

A. Yes, I have that here.

Q. This is pages 9 and 10, I think, in the book I have:

"For all these reasons the dictatorship of the proletariat——"

A. (Interrupting) I am afraid it is not the same here. Was that the middle of the paragraph.

Q. I can't tell you offhand.

A. Well, you might read the passage and I will see.

Q. It is short. You can get it:

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

"For all these reasons the dictatorship of the proletariat is necessary and victory over the bourgeoisie is impossible without a long, stubborn and desperate war of life and death, a war which requires perserverance, discipline, firmness, inflexibility and unity of will."

Do you think that force and violence is contemplated by the writer in that excerpt?

A. Lenin, of course—This is by Lenin? [357]

Q. Yes.

A. —Has the Russian situation in mind, and Russian conditions. Now, I don't know what all those reasons were. I would like to know whether it is limited to Russian conditions at the time. Undoubtedly it was a conclusion at the beginning of the Russian revolution.

Q. It does sound like violence and——

A. (Interrupting) It certainly is violence in the Russian Revolution.

Q. On page 58:

> "To tie one's hands before him, openly, to tell the enemy, who is now better armed than we are, whether and when we shall fight him, is being stupid, not revolutionary. To accept the battle at a time when it is obviously advantageous to the enemy and not to us is a crime and those politicians of the revolutionary class who are unable 'to maneuver to compromise' in order to avoid an obviously disadvantageous battle are good for nothing."

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Do you think that contemplates peaceful revolution?

A. No; but that again predicts through the relation to the Russian situation.

Q. I think you said you hadn't read anything by Mr. Bittelman, did not you?

A. No; I haven't.

Q. You haven't read anything by Mr. Olgin, have you? A. No.

Q. Do you think that Browder's words, "effective majority," mean a majority of the potential fighters in the expected revolution as distinguished from a majority in a numerical sense?

A. Would you state that once more? I am not quite clear on it.

Q. Do you believe that Browder's words "effective majority" mean a majority of the potential fighters in the expected revolution, as distinguished from the majority in a numerical sense?

A. I should want to know the connection before I was sure what was meant by that passage.

Q. Just a minute and I will give it to you. It is in the first portion of the book, "What is Communism?" by Earl Browder, that I [358] read to you, and I will just read you the one sentence, Professor:

> "In this revolutionary situation the Communist Party, which has won the active support of the majority of the working class and

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

of the decisive sections of the other exploiting classes, win some of the armed forces to its side and leaves the effective majority of the population to the seizure of state power."

A. I don't suppose that is limited to counting noses majority.

Q. Professor, have you read the immigration law?

A. The what?

Q. The immigration law.

A. No; I have not.

Q. Do you know anything about the charges which Mr. Bridges is under here at this time?

A. Only in a vague way. I would not say in any sense, any technical or legal sense, that I know about them.

Q. You don't know the specific statute under which these charges are drawn, do you? A. No.

Mr. Shoemaker: Mr. Bonham has a few questions he would like to ask.

By Mr. Bonham: Q. I shall be brief for several reasons: One is that my theory— you see, we all have theories—is that your theory of Lenin's theory, of Marx' theory, is not an issue in this case or, at least, if so, it is so remote as to be hardly discernible. The issue is whether the Alien belongs, or is affiliated with an organization that believes in, teaches and advocates the overthrow of the Govern-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

ment of the United States by force and violence; also whether the organization to which he, we believe, has been proved to belong to and affiliated with, prints, publishes and distributes literature advocating the overthrow of the Government of the United States by force and violence. I would like to clarify briefly whether you qualify or claim to qualify as an expert on Leninism and Stalinism, or simply on Marxism.

A. Those three men's philosophies are taken usually as thrown together in such a fashion that no one would have to know about the others. [359]

Q. Then, you claim to be an expert on all three?

A. I think I know about the philosophies of all three.

Q. You disavow any expert knowledge of their tactics and activities?

A. I don't know anything about that, not in any technical sense at all.

Q. Now, do I understand that the document that you have so extensively and carefully prepared is claimed to show that the dictatorship of the proletariat can be attained by parliamentary and peaceful means?

A. I think that document shows that theoretically it can be attained by peaceful means, but that the citations of history indicate the belief of Marx and Engels that it would not be so attained.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. You have not made the issue clear, at least not clear to me. I would like to know whether you claim, as the result of your studies on that point, whether or not it is possible to establish the dictatorship of the proletariat, whether it is possible to establish it by peaceful means.

A. It is theoretically possible, yes.

Q. Are you familiar, and I take it you must be, with "The Proletarian Revolution and Renegade Kautsky"?

A. Yes, I have read that.

Q. Have you read it recently?

A. Not all of it; no.

Q. Do you know Lenin excoriated Kautsky for claiming just what you have claimed?

A. No; I think not. I think you haven't quite caught my distinction there. You asked me: on purely theoretical grounds, if it could be attained. When one is considering practice, one doesn't take a theory all by itself. What Kautsky claimed was that it was not only theoretically possible, but it was practically possible.

Q. That is a good deal like——

A. (Interrupting) There is a distinction there between what you expect in practice and what a theory might say is possible. [360]

Q. It seems to me that is like the shell game: guess which shell the pea is under.

A. I rather objected to your question in the first place on the ground that I don't think that distinc-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

tion of theory and practice ought to be made, and I hesitated to answer on the basis of pure theory. When I answered on the basis of pure theory I was thinking of the Grundsatze. When I answered that question, I cited a process that was depicted in detail by Engels in which it would be attained by peaceful means, which he didn't believe would ever happen.

Q. Well, in everyday language, could you make it clear as to whether violence and force were necessary to the establishment of the dictatorship of the proletariat?

A. In the sense of this philosophy, if you get a period of breakdown and it is started, the balance has to be resisted to establish a dictatorship of the proletariat. You don't make the breakdown and you don't seek the balance, according to the theory.

Q. What have you to say to this:

"The proletarian revolution is impossible without the forcible destruction of the bourgeois state machine and the substitution of it for a new one"?

A. The first few words of the sentence I did not get.

Q. "The proletarian revolution is impossible without the forcible destruction of the bourgeois state--" etc.

A. If you change——

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. (Interrupting) Can't you answer that without speculating in "ifs" and "ands"? Can you answer by "Yes" or No"?

Trial Examiner Landis: I think you have to give the witness his privilege to try and answer to the best of his ability.

By Mr. Bonham: Q. Proceed.

A. I am sorry to have to put an "if" in front of it. If by that you mean an entirely new system of production and distribution of goods, such a new system of production and distribution of goods could only be established by [361] destruction, or replacing, which is the same thing, in a sense, and wiping out of earlier methods of distribution of goods, in that sense, you can say that feudalism wiped out the church and that monarchial institutions destroyed or wiped out the institution of feudalism.

Q. You don't feel that the article you have submitted would be such as to put you in the same class, in the opinion of Lenin, as Kautsky?

A. I don't see why it should put me in any class at all, as far as Lenin is concerned. I was simply giving an exposition, not expressing beliefs, and not advocating anything from anybody.

Mr. Bonham: Your Honor, your attention is particularly invited, in the consideration of this case, to Government's Exhibit No. 98, which, I believe, vitiates the testimony of this witness.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. Reading from "Why Communism?", which is Government's Exhibit 69, I want to ask you whether or not this context causes you to admit the Communist Party in the United States advocates violence in the overthrow of the Government—page 74:

> "The overthrow of the State power, and with it, of the capitalist system, grows out of the everyday struggles of the workers. One is historically inseparable from the other.
>
> "As the organization of the workers grows, as their struggles become fiercer, while many non-proletarian elements like farmers, intellectuals and exploited members of the lower middle class join the revolutionary movement, the final onslaught on the fortress of capitalism draws nearer. These struggles are the reaction of the masses to the misery wrought by the crises of capitalism. The capitalists try to overcome the crisis by putting additional burdens on the shoulders of the masses, but they cannot cure the incurable disease. There comes a time when large sections of the population say that this simply 'cannot go on.' The governments [362] seems to be entirely inept to cope with the political and social difficulties. The belief of the population in the wisdom and all-powerfulness of the 'men higher up' is shaken. These men are losing their confidence. The confidence of the masses in their own strength is growing

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

apace. The struggles of the masses meanwhile become broader and deeper. The government tries suppression. It does not succeed in crushing the spirit of revolt. It cannot stem the tide. The previous struggles of the workers count greatly. The clearer the class-consciousness of the workers, the more steeled they are in fighting, the better the revolutionary leadership they have developed in the course of years, the greater the number of friends they have allied with themselves from among the other oppressed classes, the more capable are they to deal the final blow.

"It is not necessary that this final blow, i. e., the revolution, should come in connection with an imperialist war, although this is most likely. Capitalism will seek to prevent a revolution by plunging the country into war. War is to serve not only as a way out of the crisis but as a means to arouse the patriotism of the masses, to increase governmental terror (martial law,) and to divert public attention from internal affairs. War, under such conditions, for a while retarding the revolutionary movement, may hasten it later when the war sufferings begin to tell on the masses.

"A time comes when there is demoralization above, a growing revolt below; the morale of the army is also undermined. The old struc-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

ture of society is tottering. There are actual insurrections; the army wavers. Panic seizes the rulers. A general uprising begins.

"Workers stop work, many of them seize arms by attacking arsenals. Many had armed themselves before as the struggles [363] sharpened. Street fights become frequent. Under the leadership of the Communist Party, the workers organize Revolutionary Committees to be in command of the uprising. There are battles in the principal cities. Barricades are built and defended. The workers' fighting has a decisive influence with the soldiers. Army units begin to join the revolutionary fighters; there is fraternization between the workers and the soldiers, the workers and the marines. The movement among the soldiers and marines spreads. Capitalism is losing its strongest weapon,—the army. The police as a rule continue fighting, but they are soon silenced and made to flee by the united revolutionary forces of workers and soldiers. The revolution is victorious.

"Armed workers and soldiers and marines seize the principal governmental offices, invade the residences of the President and his Cabinet members, arrest them, declare the old regime abolished, establish their own power, the power of the workers and farmers."

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

To your mind, does that denote force and violence in this overthrow of the Government? Answer that question "Yes" or "No."

A. It denotes force and violence under special conditions.

Mr. Bonham: That is all.

Trial Examiner Landis: I have a few questions I would like to ask the witness, but let's take a recess first.

(Recess)

By Trial Examiner Landis: Q. Mr. Brown, is this the first time that you have ever testified in a quasi judicial proceeding? A. It is.

Q. Do you know that it is customary practice, in the case of what is known as expert witnesses, for the experts to receive a fee for testifying?

A. I have heard that it is; I don't know that.

Q. Are you receiving a fee here?

A. I assume I am.

Q. You assume that you are receiving the regular and customary fee [364] to testify?

A. Yes.

Q. Did you know, when this subpoena was issued on you, that you were not compelled—that is, that that subpoena did not actually compel you to come here?

A. I did not know that.

Q. In other words, that the theory of the law is that if you knew any fact that is deemed relevant

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

by counsel with reference to this proceeding you would have had to answer that subpoena?

A. I assume so.

Q. But, inasmuch as your testimony is not with reference to a fact but an exposition of a theory, it is expert judgment, the subpoena itself is not compulsory? A. I didn't know that.

Q. Let me move to your exposition of the Marxist theory. I would like to, in substance, try and take your exposition for the moment—not that I admit that your exposition is necessarily the correct exposition of the Marxian theory—but to see whether or not I can understand it and its implications. What is called by Marx—to speak in a sort of a dialectic form—the conflicting pressures of our civilization are such that they inevitably will lead to a revolution; a revolution which will perhaps take the form of the dictatorship of the proletariat, or perhaps take the form of chaos. But in any event, the pressures are such that the existing method of producing goods, and so on, is bound to break down? A. That is correct.

Q. That is essentially one of his theses?

A. That is correct.

Q. Now, am I right in saying that that has been called, in some circles, as economic determinism?

A. Yes.

Q. It is called that, isn't that true, because of the emphasis upon the economic forces underlying the shaping of our civilization? A. Yes.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. But Marx didn't limit himself solely to the fact that these changes would take place as a result of economic forces. Didn't he [365] also take into consideration that there were other forces playing upon our civilization, such as the ideologies that Lenin might possess as of a time and place?

A. Certainly, those all have their part.

Q. Consequently, the possession of certain ideologies by a group of men would be a great significance in determining direction of our civilization or even the rate of progress of our civilization from one period to another?

A. That would be true.

Q. Now, one of the prime reasons, as I listened to your exposition of the Marxist theory, that would lead to this revolution would be the dissatisfaction of masses of men with existing conditions, conditions that characterize the present economic system of producing goods; is that right?

A. Producing and shipping goods, yes.

Q. Consequently, anything that would increase the dissatisfaction of those masses of men would accelerate the period of revolution?

A. I don't think that Marx would mean or intend an artificial increasing. Anything that served in the way of education to show the men what was really going on about them, when they couldn't otherwise see it, would be important.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. I wonder if you would agree with this: that this determinism that underlies the Marxist philosophy is not, shall we say, fatalistic?

A. It is not fatalistic.

Q. And that is because men are in a sense masters of their own destinies? A. Yes.

Q. And those are forces which shape the political destiny of a nation?

A. Masters of their own destiny through understanding.

Q. Consequently, an increased dissatisfaction with the existing social order on the part of the masses of men, it would seem to me, tends to accelerate the period when the masses, dissatisfied with existing conditions, would say, "We want this, we want that, we want the other thing, which our present civilization hasn't [366] produced for us," and thereby bring about that resistance, which, as you expressed it, might lead to revolution with armed violence and the like?

A. Yes, provided that that was based on a true analysis of actual conditions.

Q. What you are saying——

A. (Interrupting) Certainly, if there were deception, if they were being fooled by somebody who was trying to hold them down, it would certainly affect the development or it would be intended to affect the development of it.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. What you are saying there is that a thing that would effect the acceleration of that period of time would be a tendency to lull the masses into the belief that conditions were fine when they were not fine?

A. Yes; such a belief would be a deceptive belief.

Q. And the discovery of such deception would thereupon increase the dissatisfaction of the masses and thereby accelerate the point of time of revolution?

A. Readiness to organize and readiness to take hold of such power as they could get to better their condition.

Q. If that is so, isn't it almost a necessary consequence of that theory that anybody who is dissatisfied with existing conditions, with the social order and advocates a change of some consequence in that social order is thereby bringing nearer and nearer the time when revolution will take place?

A. Provided other conditions are ripe for that revolution. That is not the sole factor.

Q. I agree it is not the sole factor.

A. Preparing them for going in a certain direction when the proposition comes—that is true.

Q. That isn't quite it. Assuming that the other factors remain the same, this factor of an increased dissatisfaction with existing institutions would tend to accelerate, shall we say, the revolution?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. If you are using "revolution" in a general sense for the full process of moving along, yes.

[367]

Q. And, therefore, anybody who preaches dissatisfaction with the social order is thereby accelerating the revolution?

A. I should like to know in what terms you are thinking of in connection with that question. For example, activities like that of the Consumers Union which attempts to tell people the quality of products they are getting and to undermine some of the deceptive statements made by advertisers and causes increasing dissatisfaction among the people: would that fall under what you mean?

Q. For example, say, an outcry against Wall Street, against international bankers, against—what are some of the other symbols that are commonly used—but that type of thing—outcries against matters of that type and trying to convince masses of men that the existing institutions of government, or of society, are such that they do not give these benefits to which these men are entitled, that in itself would accelerate the revolution?

A. I think it would not be correct Marxism merely to make such outcries without pointing to definite facts. The situation must be such that the actual happenings justify the outcry and then it would be legitimate for them.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Q. What you are saying is that the economic forces have to combine with what might be called the ideological forces——

A. (Interrupting) Exactly.

Q. (Continuing) —in order to precipitate the revolution? A. Exactly.

Q. But the economic forces might be such as would normally precipitate the revolution and yet there could not be such a massed consciousness of the wrongness of the economic forces so that that would necessarily delay the coming into existence of the revolution until the ideology was ripe for it?

A. In other words, it would——

Q. (Interrupting) The point I am wondering about is whether or not Marx' philosophy isn't such that it almost necessarily carries [368] the implication that anybody who preaches extensively against the social order is thereby accelerating this thing called the revolution; that the revolution, according to the Marxist theory, cannot be accomplished without force and violence, and that, therefore, anybody that preaches against the social order is necessarily advocating force and violence?

A. I do not understand the Marxist theory to just protest against the social order without trying to pick out particular points and particular things that were going wrong and that were not working.

Q. What worries me is this: As to whether or not, assuming the Marxist philosophy, assuming that a man who was an adherent of that philosophy,

(Testimony of William Schneiderman.)

(Defendant's Exhibit "C"—continued.)

his criticism of the social order made public, and his advocacy of the changes in the social order, especially if that advocacy is accomplished by flustration, whether or not the necessary implication isn't that that man is participating in bringng about the period envisaged by Marxists, to-wit, revolution with force and violence?

A. I shouldn't say that it was in the sense that it is precipitating force and violence. I should say it was hastening the period when there would be a mass demand for a change. Now, if that demand for a change is denied by——

Q. (Interrupting) Which is assumed by the Marxist——

A. (Continuing) —certainly, except in so far as democracy can go; then, of course, you meet with the development of violence. That is, I think that Professor Dewey has given a statement—Dewey is not a Marxist himself at all—but in "Liberalism and Social Action," in one of the last pages, he says that when a majority have begun enacting laws for their own benefit—I might say, as a preliminary, that Dewey is very much opposed to force all through "Liberalism and Social Action—" but in that last chapter, he says, in one case, force is necessary and is to [369] be approved. For example, when the majority, through legal means, have entered upon a course of reconstruction for their own benefit, and they are opposed by a minority who re-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

fuses to permit them to realize these things they have already won, it is then right for the majority to use force against the minority. From that point of view, if you have a resistant minority they are quite as much provocateurs of force and violence as the majority are. It is a question of which side is providing the force and violence.

Q. True. I agree that the Marxist exposition that you give is that the initiation of a program of force and violence will come from the resistant minority rather than the majority.

A. Yes

Q. Because your contention is that the Marxist says the majority will try to work through democratic means. A. Yes.

Q. Now, there, again, I am disturbed by your interpretation, in this respect: The Marxists, as I understand your description of them, assume that the institutions of our society are now in the control of bourgeois, dominated by him, operated in large measure for his profit; that such concessions as he gives are wrung from him. Now, that conception goes through certain institutions of our society, to certain systems of laws, that we have adopted in the past, and that are still with us. I am wondering also whether it does not go through to the procedures whereby those laws themselves are adopted. The Marxist, for example, according to your exposition—he says: "This specific series of law under

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

which we operate at the present time—" for example, take such a specific illustration as the anti-picketing law—"those things are bourgeois laws enacted for the protection of the bourgeois. They aren't really representative of democratic principles because the mass of people, if they only perceived that their own interests were allied against laws of that nature, would wipe them from their books."

[370]

Is that a fair application of your exposition?

A. I would like to risk another example which I think shows the application. I hesitate to give concrete illustrations because I am not skilled in that kind of application. For example, we have passed such a bill as the Wagner Labor Law, which is understood by labor, as I understand it, to give labor the right to organize. You find in factories like Mr. Ford's or the steel plants, an opposition to carrying on that process which labor understand that the law gives them a right to carry on. Now, in that case, I think that they might interpret—I think the Marxian might interpret that as being one of the cases of what the bourgeois would do if the proletariat enacted laws for its benefit which opposed their interests.

Q. I think that might be a good illustration. Let us pursue that through a little further. The Marxist will not only take the opposition of particular employers and certain laws as examples of the resistance on the part of the bourgeois to the attain-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

ment by the proletariat of their aims through the democratic method, but he would go further, as I am trying to apply your exposition: He would go further and say, "Well, those laws in order to be enforced need to be interpreted." The agency for the interpretation of that is our courts. Our courts, through devious means, by a constitutional interpretation or simply by interpretation, succeed in stripping those laws of their vitality and thereby a mass movement is centered on it. The courts themselves are instrumentalities of the bourgeois system. Therefore, we have to rise in protest against those intellectuals.

Pursue that further; carry it beyond the judiciary: The process itself may be carried further to the representative side of government as well. So that the protest of the Marxists would seem, by implication, to carry not only through certain measures, but to the very measures which underlie the framework [371] of our Government today. How, then, can he at the same time insist upon the maintenance of the Government where he attacks the very framework of the Government as itself being merely an instrumentality of a bourgeois society?

A. I should think that could be answered this way: that at the present time we still have sufficient democracy, and can put sufficient pressure on the courts, and can put sufficient pressure behind certain legislation so that a great deal can be attained.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Get what can be attained first. I think that this process of attainment can go on indefinitely until it comes to a point of a break when the influences of the forces that control the Government will oppose anything further, any further advance of that process.

From Mr. Browder's analysis, you can meet it very easily. For instance, we have cases where we elect representatives and we also have lobbyists that are definitely opposed to certain measures. For example, we had a concrete example—I don't like to give concrete examples—but we had a very excellent food and drug law in the state this year. The food and drug legislation, according to my friends, is extremely bad and extremely ineffective in this state. This legislation was presented at Sacramento and was very ably presented. It went to committee. There the committee heard the argument and instead of discussing it at all they asked one of the lobbyists what to do about it and the lobbyist turned "thumbs down" and walked out, and they tabled this bill without discussion.

Of course, the answer, and Mr. Browder's immediate answer, would be to elect some new assemblymen and some new senators.

Q. I wonder if it is the real answer that is being made by the Marxist?

A. I think it is the immediate answer. I do not think there is any illusion. I don't think Browder

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

is under any belief in connection with that except that it could be continued [372] indefinitely.

Q. I wonder if the answer, though that isn't being made and suggested, is that since this process goes on, since the present mechanism of trying to express the ideas of the masses fail to express the ideas of the masses because of the imagination of the bourgeois, whether it isn't wisest to tear down those procedures and to strike against the procedures themselves?

A. I think the conclusion is definite that that would have to be done in the long run. I think it is equally true that it is not the thing that could be done possibly or plausibly at the present time.

Q. When this term "democracy" is used in the Communist Manifesto, the conception, I suppose, is a conception of government by the majority, but is that conception necessarily a conception of government by those procedures with which we try and reflect the majority in the United States?

A. Of course, the particular building up of forms of government, or institutions, through which the majority of the people can realize their aims or ambitions is a special problem. Now, the conclusion seems to be that in general most present forms would not lend themselves to that to any high degree.

Q. In other words, the Marxists take the position that most present forms that we have for attaining

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

this ideal of democracy of government by the masses and for the masses are pretty ineffective?

A. Likely to become ineffective. And where you have the capitalists on one side, with ownership of communications and the like and the proletariat on the other without ownership, you are likely to have a hard time even if you are in the majority.

Q. Consequently, it might be wise to inculcate into the masses a distrust of the procedures under which they are governed as of the present time, pointing out that that procedure can be so readily utilized by the bourgeois to benefit their own ends?

[373]

It would be important to give them an understanding of this point of view, that is, of how they work and what they do, and be aware of what is happening.

Q. Is there anything in the Marxist doctrine which, for example, points to such a thing as the tripartite division of power as being essential for the maintenance of democratic government?

A. I don't know anything of the sort.

Q. And yet that is said to be one of our guarantees to liberty for many people? A. Yes.

Q. So that the procedures of democratic government that might be advocated by the Marxist aren't necessarily the same as the procedures of government which, broadly speaking, are in effect in the United States today?

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

A. I think that would be true.

Q. One other thing, Mr. Brown: The Marxist philosophy, as you pointed out, looks forward towards the disintegration of capitalists through their inability to supply the masses with a type of living which the masses felt, in justice, they demand. It looks forward to that and says, "That is inevitable." At the same time, when that period of intense dissatisfaction comes about, which Browder speaks of as a revolutionary situation, he seems to say that that in itself will not produce the revolution but some kind of a causus belli has to come into existence? A. Yes, sir.

Q. Would it be a fair interpretation of that language to say that it is the duty of the Communist Party to provide that causus belli?

A. I don't think anything could be provided, as Marx would understand it. For example—and I am not sure how good the example is—but in Russia the economic structure broke down pretty well during the War. The army was no longer paid and they were living practically on the front. You had the peasants property hungry, hungry for land, and you had a situation where the landowners could no longer exercise control of their own government; [374] no unity in the governing class. Then you had a case of the Communists developing a cooperation between the workers and peasants and taking over of the government and making use of an insti-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

'ution already existing, the Soviet, to develop a special form of government which they expected to and did succeed in continuing along socialistic lines.

Q. The Marxist philosophy as such is applicable to the past as well as to the present, isn't it?

A. Yes.

Q. So we could take a thing like the American Civil War and interpret it according to the Marxist philosophy?

A. There is a book by Marx on the Civil War in America. I haven't read it.. I think it has been translated into English.

Q. To put the thing more and more concretely: we might contrast, for example, the position of the Republican Party in that connection with the position of the Abolitionist Party of that time. It may be a fair thing to say of persons like Lincoln and Seward, and so on, that they recognized, consciously or unconsciously, that a conflict was inevitable, but they sought not to provoke it; they realized that it might happen, but they were not going to be deterred from pursuing their ideals with reference to the destiny of this country merely because of the fear of a conflict. If it came, it came. "With a house divided," a speech, an expression of Lincoln's firm determination to see that the nation couldn't be half slave and half free. One might regard Sumter as a causus belli which brought into existence, which provoked, the revolution, to use the Marxist term.

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

Now, contrast that group, if you will, with the Abolitionists represented by Garrison and the like. Garrison said the Constitution was a pact with the devil. They sought to provoke the revolutionary situation. John Brown's raid, in a sense, was an effort to provoke that situation. [375]

Now, as I listened to that language of Browder, I wonder into which category one would put him,—into the category of the Abolitionists, of John Brown and his group, or into the category of Lincoln and his group,—from the standpoint of Marxist philosophy?

A. I should think he would fall in the category of Lincoln's group.

Q. That is, with no desire to provoke the situation?

A. Of course, I am assuming that you can accept Browder's statement concerning the support of the Democratic Party. He brings out in "The People's Front" that he considers it the correct thing to preserve all of our democratic structure and to push that as far as possible for the advantage of the working classes. To provoke, without a revolutionary situation, which he says didn't exist, would be certainly, from Marx's point of view, and from the beginning of Marx's theory, everything would be lost if a revolution was precipitated, if emotion, feeling or anything of that sort, excitement, precipitated a revolution at a time when a revolution-

(Testimony of William Schneiderman.)

(Defendant's Exhibit "Q"—continued.)

ary situation was not ripe. That would be the surest way of thwarting your end, according to the Marxist theory.

Q. Now, there is a little difference in tenor there as between what we might call the almost sad and tragic language of Lincoln's Springfield speech, "The house divided," and his other speeches, a sense of perhaps the inevitability of the conflict, and yet tragic atmosphere that springs from those speeches with perhaps what might be called almost the fiery tenor of these remarks.

A. When I heard Browder over the radio, I never thought there was a fiery tenor to his remarks.

Q. I have never had that privilege. All I have to use are these exhibits here.

A. There is one chapter in an exhibit here which I think gives an account of that radio speech—one of the chapters in this book. It is a series of questions and answers. [376] I think, delivered over the radio.

Q. I have seen that, because that was a portion of the record in the Strecker case, if I recall.

Isn't that right, counsel?

Miss King: It was in the brief and amicus.

The Witness: It is Section 3 here (indicating,) —a series of questions and answers—a radio interview given Earl Browder at Hartford, Connecticut, on October 6, 1936. It is page 176 of "The People's Front."

(Testimony of William Schneiderman.)

Trial Examiner Landis: I think that is all I have.

(Witness excused)

[Endorsed]: Defendant's Exhibit Q. Filed Dec. 12, 1939. [377]

Mr. Anderson: I will offer the statement of Professor Walter Thompson as Defendant's Exhibit "R."—all of which I ask may be deemed read into the record, your Honor.

The Court: Very well.

(The document was marked "Defendant's Exhibit R.")

DEFENDANT'S EXHIBIT "R."

Examination of Walter Thompson taken from official report of proceedings before the Immigration and Naturalization Service of the Department of Labor, Docket No. 55973/217, in the Matter of: Harry Bridges—Deportation Hearing; Angel Island, San Francisco, California, August 16, 1939, and August 17, 1939; Direct Examination commencing at page 4566 of said transcript:

[Note: All italics in this exhibit are by the author.]

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

WALTER THOMPSON

was called as a witness on behalf of the alien and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Miss King:

Q. Will you give your name and address to the reporter?

A. Walter Thompson, 121 Castilleja Avenue, Palo Alto, California.

Q. Professor Thompson, where did you go to college? A. McPherson College.

Q. And have you had any courses of study since you graduated from college?

A. Yes, I took my A. B. at McPherson College in 1912, then I took my Master of Arts at the University of Kansas in 1913, then I took graduate work at Wisconsin, Chicago; Sorbonne; and after the War returned to Wisconsin where I took my Ph. D.

Q. Now, in what courses did you specialize, both at college and afterwards?

A. In college I specialized in history, and in my graduate work I specialized in sociology and social science.

Q. And have you done teaching since you have graduated from college?

A. I have spent most of my time teaching since I graduated from college, except for my graduate work.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. What courses did you teach and in what universities?

A. I assisted, and afterwards was an instructor in political science at the University of Wisconsin, and then I did some administrative work, that is, public school work; then I went to Oklahoma, where I was Professor of Government for three years, and I came to Stanford in 1928, where I am now Professor of Political Science. In 1931 [378] I served as a Carnegie Professor at Upsala, Sweden, and Oslo, Norway.

Q. What languages do you read?

A. Well, in college I taught Latin: that was during the last two years of my college work. I defrayed my expenses by teaching Latin in preparatory schools. I wouldn't swear that I could read Latin now, if someone would present me with a copy of difficult Latin. I took some Greek: I read French with difficulty: German comes easier; Norwegian and Danish very easy, Swedish is a snap; and I also read English.

Q. Were you born in the United States?

A. Yes.

Q. To what societies do you belong?

A. I belong to the American Political Science Association and to the Association of University Professors.

Q. Do you have any honorary degrees?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Yes. Two years ago, my old college, celebrating its 50th Anniversary, called back three of the old graduates to receive honorary degrees, and I was one of them. I received a degree of Doctor of Laws.

Q. What books or articles of yours have been published?

A. "Federal Centralization" was published by Harcourt Brace in 1923, and then I collaborated with other scholars on "Government Control of the Economic Order," which was published by the University of Minnesota Press in 1935; and also "The Control of Liquor in Sweden" was published by the Columbia University Press in 1935.

Q. Have you published any magazine articles or things of that kind?

A. I don't know how many articles I have published. I have contributed to such organs as "The Annals of the American Academy" and the "American Political Science Review" and the "National Municipal Review," and so on.

Q. Are you writing a book now or working on a book?

A. I am working on a book on proletarian political theories.

Q. And in connection with that and with your previous work, have [379] you made a study of Marxism?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Yes, for the last 10 or 12 years I have had to make a study of Marxism, because I am teaching political philosophy and especially modern political theory.

Q. And in what did that study consist?

A. Well, in modern political theory we find, especially in contemporary theory, a great deal of it is either adherent to Marx or it is refuting Marx, and we find that there is a deviation from Marx—so Marx is an important background.

Q. When you say Marx is an important background, have you studied Marx himself?

A. Oh, yes. I think I have read most of his works. I stopped with the second volume of Das Kapital.

Q. When you say you have read most of his works, what have you in mind?

A. Oh, such works as the "German Ideology," "The Poverty of Philosophy," "The Communist Manifesto," "Critique of Political Economy," "Wage, Labor and Capital," "Value, Price and Profit," and "Capital."

Q. What other Marxian writings, exclusive of Marx himself, have you read, if any?

A. Well, of course, it is hard to differentiate between Marx and Engels, because they collaborated so closely together. But I have read such works as "The Origin of the Family, Private Property and the State."

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. Have you read any Leninism or Stalinism?

A. I have read Stalin's "Leninism," plowed through it in German before we had an English edition, and then I have read such works as Lenin's "Imperialist Man," "Imperial Criticism," and "Imperialism," "The State and Revolution," and "The task of the Proletariat in Our Revolution."

Miss King: I think that is all I have. Do you have any questions that you can ask?

Mr. Shoemaker: Yes, I would like to ask the Professor a few questions. [380]

Cross Examination

By Mr. Shoemaker: Q. Do you know anything about Leninism, Stalinism, Professor?

A. I think I know something about Leninism.

Q. Would you qualify as an expert on those as well as Marxism?

A. I think I could qualify as an expert on Leninism. I wouldn't say that I could on Stalinism.

Q. Do you know anything about the practice of Communism?

A. You mean the contemporary practices?

Q. Yes. A. Very little.

Q. Are you a member of the Communist Party?

A. I am not.

Q. Have you ever been?

A. I have not.

Q. Have you ever been affiliated with the Communist Party? A. I have not.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Mr. Shoemaker: I think I will have to raise the same objection to this witness that I did to Professor Brown.

Miss King: I think that matter was all argued out.

Trial Examiner Landis: Well, that is overruled, —the objection of Mr. Shoemaker.

Mr. Shoemaker: All right.

Trial Examiner Landis: Now my understanding is that the witness's statement here is to be received in evidence as if it were read, and in order to permit counsel for the Government and myself to go over this statement so that we can get its effect and weigh its effect, and try and understand it and ask such questions as may occur to us in that connection, we will adjourn for the day——

Mr. Gladstein: (Interrupting) Before you do that, your Honor, I don't think the record clearly shows, and I think it should show before adjournment, that Professor Thompson has at our request prepared a 30-page——

The Witness: (Interrupting) 36-page.

Mr. Gladstein: How many pages?

The Witness: 36-page. [381]

Mr. Gladstein: —a 36-page statement on the subject of Marxism and other topics dealt with in that statement, and that we offer that statement for the record and that it should be deemed to have been read into the record as though Professor

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Thompson had read it. Is there any objection to that?

Mr. Shoemaker: I have no objection at all.

Mr. Grossman: It was my understanding that the copy given to the Dean and Mr. Shoemaker, and also the reporter, is not a complete copy. I don't think our stenographer——

Trial Examiner Landis: This will be off the record.

(Remarks off the record.)

Trial Examiner Landis: If there is nothing further, we will adjourn.

The statement referred to appears in words and figures as follows:

WALTER THOMPSON

I feel that I should preface my testimony with a statement of my position. Being under subpoena at the request of the defense, I am technically a witness for the defendant. However, I hold no brief either for or against Mr. Bridges, whom I have never met, whom I do not recall ever having seen, and about whom I know very little. My testimony will consist in an exposition of the leading adherents of the Marxian school of political philosophy. I intend to make that testimony objective and detached. I have explained my position to the counsel for the defense, and they have seen fit to request my presence under these conditions.

At the very outset we have to guard against symbolism in any discussion of Marxist philosophy.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Marx has become a prophet and a symbol of hope for a large number of people. On the other hand, he has also become a symbol of evil for a large group. In discussions of Marx there has been entirely too much heat and too little light. There has been a tendency to lump Communists, Syndicalists and Anarchists into the same category and to designate [382] them by the word "Reds." These various schools of thought differ widely. They vary in their origins and have their roots in different philosophies. The founders of these schools of philosophy were opposed to one another. Thus, we find Karl Marx in his Poverty of Philosophy ruthlessly devastating his contemporary, the French Anarchist, M. Proudhon. We also find him breaking with the Russian Anarchist Bakunin and fighting to keep Bakunin and his followers from gaining control of the First Internationale. We find Lenin attacking the theorists of Social Democracy as temporizers and renegades. To Lenin the Anarchists were not Marxists in any true sense.

The question also may be raised as to whether an exposition of the theories of Marx and Engels is relevant to the case at hand. A claim for relevancy may be made on the grounds that recent and contemporary leaders of Communist thought claim to be followers of Kark Marx and Frederick Engels. Lenin insisted that he was a Marxist, and he was jealous of any unorthodox interpretation of Marx-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

ism. Stalin claims to be a follower not only of Lenin, but of Marx and Engels. Earl Browder, the recognized leader of the American Communist Party, in his Communism in the United States, repeatedly asserts that he is following in the footsteps of Marx.

It is difficult to summarize the philosophy of Marx. The German edition of the works of Marx and Engels, sponsored by the Marx-Engels Institute of Moscow, consists of some fifteen large volumes. At least twenty volumes of Lenin's works have been translated into English. It is from such prolific writings that we must uncover a Marxist philosophy. But there is such a philosophy, and it is remarkable for its unity and coherence. [383] However, the Marxist philosophy must be considered as a whole. The philosophy is so broad that it would be easy to distort it by selecting excerpts here and there.

We must also bear in mind that no philosophy is written in vacuo. Philosophers are human and reflect the spirit of the times in which they live and write. This is especially true with regard to Marx, Engels and Lenin, all three of whom lived through turbulent periods of history. Not only must their writings be considered in the light of when they were written, but in the light of the occasion under which they were written. For example, we may

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

select a statement in Lenin's The State and Revolution (Vanguard Press, 1926, p. 156):

> "We have but to overthrow the capitalists, to crush with the iron hand of the armed workers the resistance of these exploiters, to break the bureaucratic machine of the modern State—and we have before us a highly technically-fashioned machine freed of its parasites, which can quite well be set going by the united workers themselves, hiring their own technical advisers, their own inspectors, their own clerks and paying them all, as, indeed, every 'State' official, with the usual workers' wage."

Considered purely from its face value, this statement is an expression of violence. However, when we consider that this work was principally intended as a refutation of the stand of the Social Democrats on the one hand and the Anarchists on the other, it becomes far more moderate. Also, when we consider this work was written on the eve of the Soviet seizure of power in Russia, it is not surprising that Lenin should rationalize a justification of the use of force. Jefferson rationalized a similar justification in the Declaration of Independence when he endorsed the right of a people to alter or abolish a government. The expression of such a sentiment was necessary to justify the abolition of English rule in the American colonies. [384]

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Let us take another example quoted in the same work (P. 168). It is from the pen of Frederick Engels:

> "These gentlemen, have they ever seen a revolution? Revolution is undoubtedly the most authoritative thing possible. Revolution is an act in which part of the population forces its will on the other part by means of rifles, bayonets, cannon, i. e., by most authoritative means. And the conquering party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionaries. Had the Paris Commune not relied on the authority of the armed people against the bourgeoisie, would it have lasted longer than a single day? May we not rather censure the Commune for not having made sufficient use of this authority? And so, either the Anti-Authoritarians themselves do not know what they are talking about, in which case, they merely sow confusion; or they do know what they are talking about, in which case they are betraying the proletariat. In either case, they serve only the interests of reaction."

Like Lenin's statement, this at first sight appears to justify violence. However, Engels was challenging the position of the anarchists and the statement was made in the year 1873. The contention of the anarchists had been that authority was not neces-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

sary and that the state could be overthrown without establishing authority. In the light of this, Engels was merely pointing out the inconsistency of the position of the anarchists.

Let us now turn to the content of Marxist philosophy. I shall not deal at length on historical materialism. That comes closer to Professor Brown's field, and he has already discussed it. But due to the unity of Marxian philosophy we cannot entirely ignore it here.

The materialism of Marx is not pure materialism in that it would exclude the factor of human volition. Such extreme [385] materialism would be fatalism, and not suitable as a basis for revolutionary action. As a materialist Marx insisted that men were shaped by their environment. "It is not the consciousness of men which determines their existence, but on the contrary their material existence determines their consciousness." (Preface to Critique of Political Economy.) The most significant part of their environment is the economic structure on which, in his view, society is based. But let us permit Marx to speak for himself (Ibid., p. 11):

> "The sum total of these relations of production constitutes the economic structure of society—the real foundation on which rise legal and political superstructures and to which correspond definite forms of social consciousness. The mode of production in material life deter-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

mines the general character of the social, political and spiritual processes of life."

This concept is not entirely new. It was noted by writers such as Polybius, James Harrington and even Alexander Hamilton. However, credit must be given to Marx for developing it to the point where it served as the basis for his explanation of social, economic and political phenomena.

According to the view of Marx, it is the economic foundation which he designates by the term "mode of production" that determines both the ideological and the structural phases of society. It is from their relation to this economic substructure that social classes take their form. Control or ownership of the means of production spells supremacy and creates a dominant class to which the other class or classes are subordinate, and thus class antagonism ensues. This class antagonism is, in the Marxian view, independent of the knowledge of the individual members of those classes. It is something objective, and it is determined by the condition of social [386] relationships. In other words, the worker need not be conscious of the fact that his interests are antagonistic to those of his employer, but nevertheless, that antagonism exists. It is an antagonism not of individuals, but of relationships. This view is set forth in the Communist Manifesto as follows (Charles H. Kerr and Co. edition, 1912, pp. 12-13):

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"The history of all hitherto existing society is the history of class struggles.

"Freeman and slave, patrician and plebian, lord and serf, guild-master and journeyman, in a word, oppressor and oppressed, stood in constant opposition to one another, carried on an uninterrupted, now hidden, now open fight, a fight that each time ended, either in a revolutionary reconstitution of society at large, or in the common ruin of the contending classes.

"In the earlier epochs of history, we find almost everywhere a complicated arrangement of society into various orders, a manifold graduation of social rank. In ancient Rome we have patricians, knights, plebians, slaves; in the middle ages, feudal lords, vassals, guild-masters, journeymen, apprentices, serfs; in almost all of these classes, again, subordinate graduations.

"The modern bourgeois society that has sprouted from the ruins of feudal society has not done away with class antagonisms. It has but established new classes, new conditions of oppression, new forms of struggle in place of the old ones.

"Our epoch, the epoch of the bourgeoisie, possesses, however, this distinctive feature: it has simplified the class antagonisms. Society as a whole is more and more splitting up into two great hostile camps, into two great classes

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

directly facing each other: Bourgeoisie and Proletariat."

Let us now turn to the labor theory of value. This is not original with Marx. We find it clearly expounded by such a [387] reputable and accepted economist as David Ricardo. Marx, in his Critique of Political Economy credits and American source with the first sensible statement of the theory, namely, Benjamin Franklin. I quote from the Critique, pages 62-63 (International Library Publishing Co., 1904):

"The first sensible analysis of exchange value as labor-time, made so clear as to seem almost commonplace, is to be found in the work of a man of the New World where the bourgeois relations of production imported together with their representatives sprouted rapidly in a soil which made up its lack of historical traditions with a surplus of humus. That man was Benjamin Franklin, who formulated the fundamental law of modern political economy in his first work which he wrote when a mere youth and published in 1721.

"He declares it necessary to look for another measure of value than precious metals. That measure is labor. 'By labor may the value of silver be measured as well as other things. As, suppose one man employed to raise corn, while

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

another is digging and refining silver; at the year's end, or at any other period of time, the complete produce of corn, and that of silver, are the natural price of each other; and if one be twenty bushels, and the other twenty ounces, then an ounce of that silver is worth the labor of raising a bushel of that corn. Now if by the discovery of some nearer, more easy or plentiful mines, a man may get forty ounces of silver as easily as formerly he did twenty, and the same labor is still required to raise twenty bushels of corn, then two ounces of silver will be worth no more than the same labor of raising one bushel of corn, and that bushel of corn will be as cheap at two ounces, as it was before at one, cateris paribus. Thus the riches of a country are to be valued by the quantity of labor its inhabitants are able to purchase.' [388] Thus Franklin regards labor-time from the onesided economic point of view, as the measure of value. The transformation of actual products into exchange values is self-evident with him and the only question is as to finding a quantitative measure of trade. 'Trade,' says he, 'in general being nothing else but the exchange of labour for labour, the value of all things is, as I have said before, most justly measured by labour.' "

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

It is difficult to improve on the statement which Franklin made in this, one of his first literary efforts, when he was a boy in his teens. Mere exchange does not create value. Goods exchanged must be inherently different or they would not be exchanged. A common denominator is required to determine the value of one commodity in relation to other commodities. Marx follows the view of Franklin that the only common denominator is the amount of socially useful labor required to produce the commodities. Such, briefly—indeed, too briefly—is the labor theory of value.

From his labor theory of value, Marx proceeds to an exposition of the theory of surplus value. He insists that

> "Profit and not use is the leading motive in capitalist production. Capitalism is shaken to its very foundation if we make use and enjoyment and not profiteering the leading motive of production." (Capital, II, p. 136.)

How are profits possible? According to Marx, labor power is a commodity and, like other commodities, it is bought by the capitalist as cheaply as possible. If labor is the sole source of value, the employer cannot return to labor a wage commensurate with the value created by labor and still make a profit. And so, according to Marx, the return received by labor in the form of wages can only be a fraction of the value of the commodities produced

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

by labor. The surplus above this fraction is retained [389] by the employer in the form of profits.

What, according to the leading Marxian theorists, are the results of this profit system? Since the worker has received only a fraction of the value he created, he cannot possibly buy all the commodities he produced. The employer, on the other hand, does not use all of his profits for the purchase of consumers' goods, but he reinvests most of them in productive capital. But expansion of plant and equipment cannot continue without interruption for the simple reason that workers in particular and consumers generally, not having received a sufficient return for their labor, cannot absorb the output of commodities. The results are overproduction, crises becoming increasingly more serious, unemployment, quests for markets, competition, monopolies, imperialism, concentration of wealth, augmentation of the number of proletarians, and a breakdown of the capitalistic system due to its inherent contradictions. Let Marx speak for himself on the matter (Capital, I, Charles H. Kerr and Co., Chicago, 1926, pp. 836-7):

> "As soon as this process of transformation has sufficiently decomposed the old society from top to bottom, as soon as the labourers are turned into proletarians, their means of labour into capital, as soon as the capitalist mode of production stands on its own feet, then the fur-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

ther socialization of labour and further transformation of the land and other means of production into socially exploited and, therefore, common means of production, as well as the further expropriation of private proprietors, takes a new form. That which is now to be expropriated is no longer the labourer working for himself, but the capitalist exploiting many labourers. This expropriation is accomplished by the action of the immanent laws of capitalist production itself, by the centralization of capital. One capitalist [390] always kills many. Hand in hand with this centralization, or this expropriation of many capitalists by few, develop on an ever-extending scale, the co-operative form of the labour-process, the conscious technical application of science, the methodical cultivation of the soil, the transformation of the instruments of labour into instruments of labour only usable in common, the economising of all means of production by their use as the means of production of combined, socialized labour, the entanglement of all peoples in the net of the world-market, and this, the international character of the capitalist regime. Along with the constantly diminishing number of the magnates of capital, who usurp and monopolise all advantages of this process of transformation, grows the mass of misery, oppres-

Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

sion, slavery, degradation, exploitation: but with this too grows the revolt of the working-class, a class always increasing in numbers, and disciplined, united, organised by the very mechanism, of the process of capitalist production itself. The monopoly of capital becomes a fetter upon the mode of production, which has sprung up and flourished along with, and under it. Centralisation of the means of production and socialization of labour at last reach a point where they become incompatible with their capitalist integument. This integument is burst asunder. The knell of capitalist private property sounds. The expropriators are expropriated."

Long before Marx wrote this, he and Engels had justified the expropriation on historical and moral grounds. In the Communist Manifesto (pp. 31-2) we find the following:

"The theoretical conclusions of the Communists are in no way based on ideas or principles that have been invented, or discovered, by this or that would-be universal reformer. [391]

"They merely express, in general terms, actual relations springing from an existing class struggle, from a historical movement going on under our very eyes. The abolition of existing property relations is not at all a distinctive feature of Communism.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"All property relations in the past have continually been subject to historical change consequent upon the change in historical conditions.

"The French revolution, for example, abolished feudal property in favor of bourgeois property.

"The distinguishing feature of Communism is not the abolition of property generally but the abolition of bourgeois property. But modern bourgeois private property is the final and most complete expression of the system of producing and appropriating products, that is based on class antagonism, on the exploitation of the many by the few.

"In this sense, the theory of the Communists may be summed up in the single sentence: Abolition of private property.

"We Communists have been reproached with the desire of abolishing the right of personally acquiring property as the fruit of a man's labor, which property is alleged to be the groundwork of all personal freedom, activity and independence.

"Hard-won, self-acquired, self-earned property! Do you mean the property of the petty artisan and of the small peasant, a form of property that preceded the bourgeois form? There is no need to abolish that; the develop-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

ment of industry has to a great extent already destroyed it, and is still destroying it daily.

"* * * To be a capitalist, is to have not only a purely personal, but a social status in production. Capital is a collective product, and only by the united action of many members, nay, in the last resort, only by the united action of all members [392] of society, can it be set in motion.

"Capital is therefore not a personal, it is a social power.

"When, therefore, capital is converted into common property, into the property of all members of society, personal property is not thereby transformed into social property. It is only the social character of the property that is changed. It loses its class-character."

Marxist theory is revolutionary in the sense that it anticipates the transfer of power from one class to another. By the very nature of capitalistic production and distribution, according to Marx and Engels, the conflicting economic interests of different groups will resolve themselves into a struggle between two classes, namely, the proletariat and the bourgeoisie. To quote again from the Communist Manifesto (p. 23),

"The lower strata of the Middle class—the small tradespeople, shopkeepers and retired

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

tradesmen generally, the handi-craftsmen and peasants—all these sink gradually into the proletariat, partly because their diminutive capital does not suffice for the scale on which Modern Industry is carried on, and is swamped in the competition with the large capitalists, partly because their specialized skill is rendered worthless by new methods of production. Thus the proletariat is recruited from all classes of the population."

And again (p. 26),

"Of all the classes that stand face to face with the bourgeoisie today, the proletariat alone is a really revolutionary class. The other classes decay and finally disappear in the face of modern industry, the proletariat is its special and essential product."

While Marx, Engels, and Lenin stressed the class struggle, their absence of class hatred is remarkable. This is due to their objective treatment and method of approach. According to [393] their theories, there is nothing evil about a capitalist. He acts and thinks as he does for the simple reason that he is a capitalist. Neither is the worker a paragon of virtue. He, likewise, acts and thinks as he does because he is a worker. There is no need of resorting to praise, abuse or incrimination. Engels, himself, was a successful businessman, and, according

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

to his philosophy, an exploiter of labor. To a "Utopian Socialist," his position would have seemed incongruous. To a "Scientific Socialist," like Engels, it was not a question whether his actions as a capitalist were morally right or wrong. From his point of view, they were historically and economically inevitable.

According to Marxian philosophy, you cannot distinguish between social evolution and social revolution. They are phases of the same historical process. Marx repeatedly asserted that you make history out of the stuff at hand, and you will not witness a transfer of power until the bourgeoisie, diminished in numbers and enfeebled by the inherent contradictions of capitalism, are unable to carry on and must yield to the pressure of the masses of organized, disciplined, and class-conscious proletarians. But even so, Marx insists that power is not apt to be yielded without the employment of force.

However, we must bear in mind that Marx, living in exile, was thinking in terms of central Europe, where democratic processes had not been fully developed. He makes an exception for England and the United States regarding the necessity of resorting to force. In a speech at Amsterdam (C. Steckloff, C., History of the First International, Eng. Trans. P. 240,) he says:

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"Some day the workers must conquer political supremacy, in order to establish the new organization of labor; they must overthrow the old political system whereby the old institutions are sustained. If they fail to do this, they will suffer the fate of [394] the early Christians, who neglected to overthrow the old system, and who, for that reason, never had a kingdom in this world. Of course, I must not be supposed to imply that the means to this end will be everywhere the same. We know that special regard must be paid to the institutions, customs and traditions of various lands; and we do not deny that there are certain countries, such as the United States and England in which the workers may hope to secure their ends by peaceful means."

Engels is less sure of a social revolution in England by peaceful and legal means. However, in his preface to the first Engish translation of Capital, written in 1886 (p. 32,) he makes the following statement:

"Surely, at such a moment, the voice ought to be heard of a man whose whole theory is the result of a life-long study of the economic history and condition of England, and whom that study led to the conclusion that, at least in Europe, England is the only country where the

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

inevitable social revolution might be effected entirely by peaceful and legal means. He certainly never forgot to add that he hardly expected the English ruling classes to submit, without a 'proslavery rebellion,' to this peaceful and legal revolution."

Lenin, in The State and Revolution, is even more skeptical about seizure of power in England and America without a resort to force. He points out that, while it may have been possible in 1871, he doubts that it could have been accomplished in 1917. (P. 145.) Here again, we must remember the time in which this book was written. It appeared between the Kerensky revolution and the Soviet revolution, and Lenin apparently considered the employment of force necessary in Russia and would even go to the extent of giving it a universal application. [395]

Marx, Engels and Lenin are considered revolutionary writers. This raises the question. "What is a revolution?" All three agree that a revolution means a transfer of power from one class to another, with all the attendant adjustments in ideology and social and economic relationships which such a change necessitates. Followers of Marx would not consider a revolution as a mere overthrow of a government by force or violence. Such action might be classed as a coup d'etat, a putsch, an in-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

surrection, or a mutiny. But a revolution is different. Force and violence means little. The important thing is the transfer of power.

Marxists do not have a monopoly on this concept of revolutions. Social scientists generally now seem to accept transfer of power rather than mere overthrow of government as a criterion. Let us turn to an objective and scholarly source. I refer to the Encyclopaedia of the Social Sciences, published by the Macmillan Company. This work is authoritative and is written by scholars and intended for students of the social sciences. The article on Revolution and Counter-Revolution is by the Danish scholar, Alfred Meusel. I would like to present it in its entirety, but it is too long. However, the following excerpts should shed light on the nature of revolution. (Encyclopaedia of the Social Sciences, Vol. 13, pp. 367 ff.)

> "To a modern student of social science the identification of revolution with political upheaval and the consequent emphasis on violence as its salient characteristic appear misplaced. The government does not function in vacuo; its personnel, organization and policies reflect the correlation of forces in the society which it rules. It is unnecessary to argue a perfect correspondence between state and society to maintain that a major change in the political order —not merely a shift in the personnel of the gov-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

ernment or a reorientation of its concrete policies—must be [396] preceded or accompanied by a drastic change in the relations among the different groups and classes in society. Thus a recasting of the social order is, at least in modern times, a far more important characteristic of revolutions than a change of the political constitution or the use of violence in the attainment of this end. This aspect of revolution distinguishes it also from coup d'etat, rebellion and insurrection, with which it is sometimes confused * * *

"The quality of the change characterized as revolution cannot be grasped without consideration of the type of society in which it occurs. This may be described in highly simplified terms as a society torn by an internal antagonism between a small upper class which by virtue of its proprietary claims to certain sources of income receives a considerable portion of the social product and a large lower class which performs all the manual, routine labor and subsists in relative poverty. The conditions of existence of the two classes present a sharp contrast and their interests are directly opposed; for, ceteris paribus, the greater the share of the propertied class in the national dividend, the smaller is that of the laboring class. It need not be assumed that the upper class is entirely

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

sterile or parasitic * * * Yet the income of the capitalist entrepreneur, like that of the slaveholder of antiquity or of the feudal lord of the Middle Ages, is based exclusively on the right of ownership. This becomes abundantly clear with the spread of the corporate forms of business organization; despite the fact that the functions of production and business management pass to salaried employees, the income claims of capitalists and entrepreneurs remain unimpaired. In addition to the mutually antagonistic upper and lower class such societies comprise a number of intermediate strata. While the relative weight of these middle groups, their traditions, political orientation and [397] cultural makeup have a definite bearing upon the origin and development of revolutionary processes, the dynamic factor of revolution is always the tension generated by the conflict of interests of the upper and lower class. * * *

"The significance of a revolution lies in the fact that it is not merely a violent and profound modification of the social organization but a major shift in the relations between social classes whereby the dominance of the upper class is destroyed and the lower class emancipates itself from economic exploitation buttressed by political subordination. In the proc-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

ess the old social order is discarded and a new one erected in its place. Bourgeois revolutions, as illustrated par excellence in the French Revolution, signify the social emancipation of the bourgeoisie and the recasting of the feudal corporative regime into a capitalist bourgeois social system. In a socialist revolution the proletariat rises to the position of a ruling class and destroys capitalism by socializing the means of production.

"The political and psychological aspects of a revolution are emphasized when it is regarded as an uprising of the many against the few, the subjects against the rulers. For some time before the outbreak of a revolution the upper class finds itself in the position of a minority isolated from the rest of society; and the old order is finally overthrown by the aroused majority because it appears to serve only the interests of the few at the top. A revolutionary outbreak is likewise preceded by a decline in the power and prestige of the political authority; simultaneously there develops among broad masses of people a consciousness of separation from and opposition to the state. Weighed by its own weakness and the growing resistance of the populace, the machine of the state gives way at various points, until a concerted attack by revolutionary forces results in its complete

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

breakdown. Then, as [398] the political system is changed, power passes from the last legitimate to the first revolutionary government; thus the gulf between the rulers and the ruled is, at least for the moment, bridged. In the typical bourgeois democratic revolution this reunion of the people with the state is formalized through the convocation of a constituent assembly which embodies the principle of popular sovereignty. * * *

"A revolution occurs, as Lenin observed, when the upper class cannot and the lower class will not continue the old system. The period leading up to a revolution is marked by increasing inability at the top to maintain the status quo and by growing unwillingness at the bottom to tolerate it. The bourgeois revolutions in western society, for instance, were preceded by an epoch of economic and social change extending over several centuries during which the power of the capitalist bourgeoisie grew at the expense of the feudal nobility. The stage for revolution was set when capitalist enterprise had spread from trade to all the important branches of production and when the feudal nobility had been transformed into a class of absentee landowners living on tribute exacted from the peasantry and on bounty from the state treasury. Similarly a proletarian revolu-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

tion comes at the close of a fairly prolonged development which culminates in the creation of a proletarian mass conscious of its own power and in the concentration of production in a few large plants controlled by private monopolies or by the state * * *

"Even if conceived in the study of a solitary thinker, a revolutionary ideology cannot for long remain isolated from practical life. It must seek to materialize itself; that is, to arouse the masses to the pitch of enthusiasm resuisite to the triumph of a major social interest. The transformations thus effected through the ideology and in it are evident when it becomes [399] the basis of an organized movement. It would nevertheless be a mistake to assume that ideology is more important than organization or that the former precedes the latter; social ideation and social volition do not work independently of each other, nor does organization represent merely a more or less accidental juncture of the two. A thinker in isolation does not evolve a really revolutionary ideology unless his ideas move toward the type of solution being worked out in the world of action. Ideology does not create organization; it merely reenforces and broadens the process of organization by clarifying its causes and aims. * * *

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"The role of organization is likely to be more important in a proletarian than in a bourgeois revolution. The transition from capitalism to a classless socialist society involves more radical and far reaching changes than suppression of the feudal order by the bourgeois system, both of which are marked by an internal antagonism between an upper and a lower class. The social status of the banker, the manufacturer and the highly paid professional prior to a bourgeois revolution is much superior to that which any element of the proletariat can hope to achieve under capitalism; for many bourgeois groups their revolution simply confirms an accomplished change. The proletariat, on the other hand, must organize in order to overcome its sense of subjection and to prepare for the seizure of political power, which represents merely the first decisive step toward its social emancipation. Nor is the socialist movement as limited in dealing with the problems of organization as is bourgeois liberalism. Groups professing a belief in the beneficence of free competition in all spheres of social life will be somewhat averse to rigidity and centralized control in politics, while those whose aim is a planned society will naturally favor the highest degree of organization. * * * [400]

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"With regard to legality of revolutionary organization there are certain theoretical differences between the situation confronting revolutionary liberalism and that which socialism must face. Whereas the former attacks a state which does not in principle tolerate any association with political aims, the latter arises under conditions of more or less developed political democracy. In practice, however, the distinction is not as sharp as these formal considerations suggest. For it is unwise to assume that a bourgeois state will permit revolutionary socialist parties to develop to the point where they can commend the allegiance of an electoral majority and can grasp political power by parliamentary means; on the other hand, it is a matter of historical record that for some time before its final collapse absolute monarchy was too weak to combat revolutionary agitation and propaganda. Despite its essential 'illegality' the revolutionary party or bloc may, in a situation where the disintegration of the old political system is far advanced, arrogate to itself a great many governmental and administrative functions thus competing with the lawfully constituted authorities (parliament with the crown, soviet with the democratic legislature).

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"Revolutions are often preceded by public calamities, such as famines and wars, which shortsighted observers incorrectly regard as causative. Their true significance from the standpoint of the revolutionary process lies in the fact that they serve to spread and to intensify the inclination to revolutionary action. Such events weaken the loyalty of the intermediate strata to the existing order and assure their neutrality if not their active cooperation in the first stages of a revolution. * * *

"When a great revolution finally breaks, it encounters virtually no internal opposition; it appears to unite the people rather than to separate them into hostile camps. Psychological drives, [401] such as suggestion and imitation or fear, play a part in this process, although it cannot be entirely reduced to these simple terms. Nothing is more contagious than success in politics as in every other field of human endeavor. The fact that a revolutionary attempt has succeeded, that under pressure from below the governing machinery of the state has collapsed, seems to put the adherents of the old order in the wrong. Few of them have so clear a conviction and so fervid a faith in the correctness of their pre-revolutionary ideals as to persist in their old beliefs under such circumstances. Most of the former conservatives adopt

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

> to a varying extent the philosophy of the victorious revolution. The swing in political opinion is so abrupt and so wide that it results in a glaring inconsistency between present profession and past performances. Many converts seem entirely to forget their past; some may see it in a new light as a state of delusion caused by ignorance and abetted by the misleading propaganda of the old regime * * *"

Lyford P. Edward, in his scholarly treatise, The Natural History of Revolution (University of Chicago Press, 1927) begins by saying (on page 2),

> "There is no agreement among writers on the subject of revolutions on a definition. The one adopted in this study as a working hypothesis is: A change brought about not necessarily by force and violence, whereby one system of legality is terminated and another originated."

Edwards insists that it takes at least three generations to develop a revolution. His reasons for this assertion are simple (Ibid., p. 17):

> "When a given social institution begins to function badly the generation then alive, the first generation to suffer, can remember it when it functioned well and believe that it can be restored to [402] useful activity by means of some minor reforms. This belief proves er-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

roneous, but the second generation are brought up to hold it, and in any case they have heard the first generation tell personal experiences of the former successful functioning of the detrimental institution. So the second generation still love and venerate it, in spite of its increasing social inadequacy. The third generation experiences continually greater frustration of their elemental wishes as the institution becomes more and more archaic. Since they find nobody who has had personal experience of its successful functioning, the harmful institution is sometimes destroyed by the third generation of those it harms. This, however, is very rare. Generally the third generation still have a strong attachment to the old institution, an attachment in part derived from tales of its former excellence, heard in early youth from grandparents and other elderly persons. In the great majority of cases it is in the fourth generation, or later, that the overthrow of the old institution occurs."

He makes other observations regarding revolutions. For example:

"Revolutions do not occur when the repressed classes are forced down to the depths of misery. Revolutions occur after the repressed classes, for a considerable time, have been in

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

the enjoyment of increasing prosperity. A marked increase of power, intelligence and wealth in the repressed portion of society is a phenomenon invariably found in the period preceding any great revolution. It is one of the most important symptoms of future upheaval." (Ibid., p. 36.)

"The mental and emotional preparation for revolution is only complete when any casual crowd of members of the repressed class can be depended upon to act in a revolutionary capacity consistently and over a long period of time. All revolutionary factors are [403] of slow development, but the revolutionary mob is slowest of all. Perhaps no current opinion is more erroneous than the notion that the actions of mobs are sudden and unpredictable." (Ibid., p. 99)

"There is much popular exaggeration of the role of mobs in revolution. Mobs do not play an essential part in certain revolutionary crises, but these crises are few and in some important revolutions they never occur at all. Even in the French Revolution, where mob action was most conspicuous, it played a decisive part only on five or six days during more than that number of years. In the Russian Revolution the mob was of importance only twice—in February and October of 1917. In the American Revolution

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

mobs were never a decisive factor. The same is true of the Puritan Revolution." (Ibid., pp. 100-101.)

In the popular mind revolutions are associated with violence, terror, massacre, wholesale executions and a tremendous loss of life. Edwards discounts this. He also points out that while a revolutionary overthrow of a regime means the replacement of one authority by another, it also tends to place the government in more capable hands.

"The terror of the French Revolution is by far the most famous. But its fame far exceeds its real importance. One hundred and seventy-eight revolutionary tribunals were set up in various parts of the country. That of Paris guillotined 2,625 persons. The total number of victims in all France was about 17,000, including 1,200 women. Not all were aristocrats; 4,000 were peasants and 3,000 workingmen. These numbers in themselves are great and horrible, but they are quite insignificant compared to the number of lives lost either in the internal insurrections or the foreign wars. More than 400,000 persons perished in the revolt of the Vendee, while 700,000 French soldiers were killed in the foreign wars from 1792 to 1800. If it be calculated that the terror did no more than [404] prevent one other revolt such as the Vendee, it saved twenty-five lives for every one it

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

lost. There can probably be little doubt that it did more than that. It was horrible, atrocious and devilish beyond words, but it was effective, as the behavior of the enemies of the Revolution proved. Even though the terror in the hands of the leaders of revolution is conceived merely as a form of civil warfare, a device for securing at the least expense the ends for which revolutions are inaugurated, it is always something more. It is like the revolution itself—a great natural phenomenon—a phenomenon which can be controlled, more or less, and directed, but not wholly and forever suppressed." (Ibid., pp. 180-1.)

"Persons not familiar with the history of revolutions sometimes assert that the Russian Revolution ended in failure because the present Russian government is just as autocratic as the old-time czardom. It undoubtedly is so, but in that respect it runs true to the revolutionary type. A revolution does not diminish the power of a central government in any essential particular; it rather increases it. Clarendon was quite correct when he asserted that the Parliament, in the days of Charles II, was more powerful than Charles I had ever been, and just as arbitrary. Patrick Henry told the exact truth when he said that the American Constitution gave the President and Congress more

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

power over the states than George III and his Parliament had ever exercised over the colonies. Napoleon was quite as despotic as Louis XVI. Lenin was more of a czar than Peter the Great, and the power now exercised by the Soviet is to all intents the same as that formerly exercised by the Romanoffs. But a revolution works a real change, nevertheless. It does not diminish the power of the government, but it does take the exercise of governmental power out of inefficient hands and put it into capable hands. It deposes an incompetent, [405] archaic ruling class and substitutes a competent, up-to-date ruling class. This is a gain. All government is oligarchical, but it makes a difference whether the government oligarchy represents the capable or the incapable classes of society. It is no objection to a government that it exercises authority—that is what it is for. A revolution comes when a government does not exercise authority well." (Ibid., pp. 205-6.)

The primary motive of Marx, Engels and Lenin was to attain political control: the means of attaining control were secondary. However, both Marx and Engels seem to have pinned their hopes on democracy. This is illustrated in their more mature writings (Correspondence of Marx and Engels, "Engels to Turati," London, January 26, 1894, p. 522).

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"And Marx has said that the bourgeois republic is the only political form in which the struggle between proletariat and bourgeoisie can be resolved."

"If one thing is certain it is that our Party and the working class can only come to power under the form of a democratic republic. This is even the specific form for the dictatorship of the proletariat, as the great French revolution has already shown. * * *" (Ibid., p. 486.)

In his Introduction to Marx's The Class Struggle in France, Engels clearly points out the advantages of democratic processes. It is important to note that this introduction was written in 1895 after the franchise had been extended to the working classes and they had availed themselves of its advantages. (Vol. XXIV in the Marxist Library, Works of Marxism-Leninism, New York, International Publishers, pp. 20-21.)

"And if universal suffrage had offered no other advantage than that it allowed us to count our numbers every three years that by the regularly established, unexpectedly rapid rise in the number [406] of votes it increased in equal measure the workers' certainty of victory and the dismay of their opponents, and so became our best means of propaganda; that it accurately informed us concerning our own strength

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

and that of all hostile parties, and thereby provided us with a measure of proportion for our actions second to none, safeguarding us from untimely timidity as much as from untimely foolhardiness—if this had been the only advantage we gained from the suffrage, then it would still have been more than enough. But it has done much more than this. In election agitation it provided us with a means, second to none, of getting in touch with the mass of the people, where they still stand aloof from us; of forcing all parties to defend their views and actions against our attacks before all the people; and, further, it opened to our representatives in the Reichstag a platform from which they could speak to their opponents in Parliament and to the masses without, with quite other authority and freedom than in the press or at meetings. Of what avail to the government and the bourgeoisie was their Anti-Socialist Law when election agitation and socialist speeches in the Reichstag continually broke through it?

"This successful utilisation of universal suffrage, an entirely new mode of proletarian struggle came into force, and this quickly developed further. It was found that the state institutions, in which the rule of the bourgeoisie is organized, offer still further opportunities for

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

the working class to fight these very state institutions. They took part in elections to individual diets, to municipal councils and to industrial courts; they contested every post against the bourgeoisie in the occupation of which a sufficient part of the proletariat had its say. And so it happened that the bourgeoisie and the government came to be much more afraid of the legal than of the illegal action of the workers' party, of the results of elections than of those of rebellion." [407]

Finally, in connection with the overthrow of government, we have to consider the Marxist theory of the state, the "dictatorship of the proletariat," and "withering away of the state."

Marx and Engels do not consider the state as eternal. They think of the state as a product of historical evolution and as an instrument of oppression of one class by another. It is in this sense that they refer to the "contemporary form of the state." This is illustrated by the following quotation from Marx (Critique of the Gotha Program, International Publishers, New York, 1933, p. 44):

"Nevertheless the different states of the various civilized countries, in spite of their varied diversity of form, all have this much in common, that they stand on the basis of modern bourgeois society, however much one

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

may be more and another less capitalistically developed. They have therefore certain essential characteristics in common. In this sense it is possible to talk of the 'contemporary form of the state' in contrast to the future in which its present root, bourgeois society, will be destroyed."

Engels, in his Origin of the Family, Private Property and the State, notes the tremendous change in social relationships occurring with the transition of society from tribal institutions to the state.

"The gentile (tribal) constitution had grown out of a society that did not know any internal contradictions, and it was only adapted to such a society. It had no coercive power except public opinion. But now society had developed that by force of all its economic conditions of existence divided humanity into freemen and slaves, and exploiting rich and exploited poor. A society that not only could never reconcile these contradictions, but drove them ever more to a climax. Such a society could only exist by a continual open struggle of all classes against one another, or under the supremacy of a third power that under a pretense of standing above [408] the struggling classes stifled their open conflict and permitted

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

a class struggle only on the economic field, in a so-called 'legal' form. Gentilism (tribalism) had ceased to live. It was crushed by the division of labor and by its result, the division of society into classes. It was replaced by the State." (P. 205.)

And so, according to Engels, the state arose as an instrument of oppression and exploitation of the masses by a powerful class.

"The state is the result of the desire to keep down class conflicts. But having arisen amid these conflicts, it is as a rule the state of the most powerful economic class that by force of its economic supremacy becomes also the ruling political class and thus acquires new means of subduing and exploiting the oppressed masses." (Ibid., p. 208.)

Engels is convinced that such an institution is only transitory. This is illustrated by the following quotation from the Origin of the Family, Private Property and the State (pp. 211-212)

"The state, then, did not exist from all eternity. There have been societies without it, that had no idea of any state or public power. At a certain stage of economic development, which was of necessity accompanied by a division of society into classes, the state became the

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

inevitable result of this division. We are now rapidly approaching a stage of evolution in production, in which the existence of classes has not only ceased to be a necessity but becomes a positive fetter on production. Hence these classes must fall as inevitably as they once arose. The state must irrevocably fall with them. The society that is to reorganize production on the basis of a free and equal association of the producers, will transfer the machinery of state where it will then belong; into the Museum of Antiquities by the side of the spinning wheel and the bronze ax." [409]

If we consider the state, in the Marxian sense, as an instrument of class domination, we realize that a proletarian revolution cannot be consummated by a mere overthrow of government. According to Marxian doctrine, political institutions are a reflection of social and economic relationships. In The Poverty of Philosophy (p. 90) Marx says:

"Truly it is necessary to be entirely innocent of all historical knowledge not to know that in all times sovereigns have had to submit to the economic conditions and have never made laws for these. Legislation, political as well as civil, could do no more than give expression to the will of the economic conditions."

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

According to Marxian theory, the changes in social and economic relationships effected by the consummation of a proletarian revolution would be so drastic that old political forms would be inadequate. The state itself, since it is an instrument of class exploitation, would disappear. It is in this sense that we must consider such phrases as "the destruction of the state," "abolition of the state," "shattering the state," "exploding the state," etc. To the layman, such words appear subversive. To the student of Marxian theory, they serve to distinguish between the proletarian revolution and the mere overthrow of government.

But unlike the Anarchists, Marx, Engels and Lenin insist that the elimination of the political state cannot occur all at once. Lenin points this out in "The Tasks of the Proletariat in Our Revolution" (Collected Works of V. I. Lenin, New York, International Publishers, 1929, Vol. 20, p. 140):

> "Marxism differs from Anarchism in that it admits the necessity of the state and state power in a revolutionary period in general, and in the epoch of transition from capitalism to Socialism in particular.
>
> "Marxism differs from the petty-bourgeois, opportunist [410] 'Social-Democracy' of Plekhanov, Kautsky and Co. in that it admits the necessity for the above-mentioned periods of

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

a state not like the usual parliamentary bourgeois republic, but like the Paris Commune."

A better statement of the necessity of continuing the state during the period of transition from capitalism to socialism is contained in the Critique of the Gotha Program ("Appendices," p. 58.)

"They (The Anarchists) say that the proletarian revolution must begin with the abolition of the political organization of the State. But after the victory of the proletariat the State is the only organization which the working class can take in its hands and set going. Maybe that State needs immediately big changes before it can fulfill its new functions. But to smash it altogether at such a moment would mean to break the only instrument through which the victorious proletariat can realize its newly conquered power, suppress its capitalist enemies and carry through that economic revolution in society without which victory must inevitably end in the defeat and wholesale massacre of the workers, as was the case after the Paris Commune."

What form will the state assume during this period of transition? Marx provides the answer. (Ibid., pp. 44-45.)

"Between capitalist and communist society lies a period of revolutionary transformation

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

from one to the other. There corresponds also to this a political transition period during which the state can be nothing else than the *revolutionary dictatorship of the proletariat.*"

Here we encounter difficulties in the use of terms. In common usage, dictatorship implies rule by one or at most by a small group. This is the exact opposite of the Marxian use of the term. Marxian theorists oppose the dictatorship of the proletariat to the [411] dictatorship of the bourgeoisie and insist that under the former you have dictatorship by the vast majority, while under the latter you have it by a small group. Lenin brings out this distinction between majority and minority suppression as follows (The State and Revolution, p. 125):

"* * * The State is a 'particular power of suppression.' This splendid and extremely profound definition of Engels is given by him here with complete lucidity. It follows therefrom that the 'particular power of suppression' of the proletariat by the capitalist class of the millions of workers by a handful of rich, must be replaced by a 'particular power of suppression' of the capitalist class by the proletariat (the dictatorship of the proletariat)."

Regarding the forms which the proletarian dictatorship will assume, Lenin says (Ibid., p. 142)

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"The forms of bourgeois States are exceedingly various, but their substance is the same and in the last analysis inevitably the *Dictatorship of the Bourgeoisie.* The transition from capitalism to Communism will certainly bring a great variety and abundance of political forms, but the substance will inevitably be: The Dictatorship of the Proletariat."

Apparently the form is of minor importance; it is the substance that really counts. To the layman it may seem paradoxical, but to a student of Marxian theory it is quite consistent to find Lenin paraphrasing Engels, and associating the dictatorship of the proletariat with democracy. (Ibid.)

"Engels repeats here in a particularly emphatic form the fundamental idea which runs like a red thread throughout all Marx's work, namely, that the democratic republic is the nearest approach to the dictatorship of the proletariat. For such a republic— [412] without in the least setting aside the domination of capital, and, therefore the oppression of the masses and the class struggle—inevitably leads to sharpening of that struggle that, as soon as the possibility arises of satisfying the fundamental interests of the oppressed masses, this possibility is realized inevitably and solely in the dictatorship of the proletariat, in the guidance of these masses by the proletariat."

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Lenin's definition of the dictatorship of the proletariat indicates that he viewed it as a mass movement aimed at the establishment of socialism. (Quoted in Stalin, J., Leninism, International Publishers, New York, Vol. 1, p. 109.)

> "The dictatorship of the proletariat is a special form of class alliance between the proletariat, the vanguard of the toilers, and the numerous non-proletarian strata of toilers (the petty bourgeoisie, the small masters, the peasantry, the intelligentsia, etc.,) or the majority of these; it is an alliance against capital, an alliance aiming at the complete overthrow of capital, at the complete suppression of the resistance of the bourgeoisie and of any attempt on their part at restoration, an alliance aiming at the final establishment and consolidation of socialism."

This is in line with Lenin's description of the soviets. (Ibid., p. 127.)

> "The Soviets are the new state apparatus, which, in the first place, represents that armed force of the workers and peasants, a force that is not divorced from the people, as was the force of the old standing army, but is bound up with them as closely as possible. In a military sense, this force is incomparably more mighty than the former; in the revolutionary

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

sense it is second to none. Second, this apparatus represents a link with the masses, with the majority of the people, that is so intimate, so indissoluble, so readily verifiable and renewable, that nothing [413] like it was even approached in the former state apparatus. Third, this apparatus, because it is elective and subject to recall in accordance with the will of the people without any bureaucratic formalities, is far more democratic than were the former ones. Fourth, it represents a firm connection with the most diverse occupations, thus facilitating all sorts of most radical reforms without any bureaucracy. Fifth, it represents a form of organization of the vanguard, i.e., of the most class conscious, most energetic, most progressive section of the *oppressed* classes of the workers and peasants, and is thus an apparatus whereby the vanguard of the oppressed classes can elevate, educate and lead in its train the whole *gigantic mass* of these classes which until now have stood absolutely outside all political life, outside history. Sixth, it makes it possible to combine the advantages of parliamentarism with the advantages of immediate and direct democracy, i.e., to unite in the persons of elected representatives of the people both legislative and *executive* functions. Compared with bourgeois parlaimentarism, this is a step for-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

ward in the development of democracy which has historical world significance * * * Had not the popular creativeness of the revolutionary classes given rise to the Soviets, the cause of the proletarian revolution in Russia would have been hopeless, for there is no doubt that with the old state apparatus, the proletariat could not have retained power, while it is impossible to create a new apparatus all at once."

We have noted the Marxian thesis that the political state evolved historically as an instrument of exploitation of one class by another. We have also noted that the dictatorship of the proletariat is considered as a transitory period from capitalism to socialism. The conclusion should be obvious, that to the extent that the exploiting class is eliminated during this period, the state will, as Engels puts it, "wither away." This is the basis [414] for the phrase, "the withering away of the state." Since it is an instrument of exploitation of classes by class, the state serves no purpose in a classless society. This is clearly set forth in the Communist Manifesto (p. 42:)

"When, in the course of development, class distinctions have disappeared, and all production has been concentrated in the hands of a vast association of the whole nation, the public power will lose its political character. Political power, properly so-called, is merely the organ-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

ized power of one class for oppressing another. If the proletariat during its contest with the bourgeoisie is compelled, by the force of circumstances, to organize itself as a class, by means of a revolution, it makes itself the ruling class, and, as such, sweeps away by force the old conditions of production, then it will, along with these conditions, have swept away the conditions for the existence of class antagonism, and of classes generally, and will thereby have abolished its own supremacy as a class.

"In place of the old bourgeois society, with its classes and class antagonisms, we shall have an association, in which the free development of each is the condition for the free development of all."

Marx and Engels do not only contemplate the elimination of class exploitation in any given country. They boldly assert that, to the extent that this is accomplished, peace among nations will follow (Ibid., pp. 38-39:)

"In proportion as the exploitation of one individual by another is put an end to, the exploitation of one nation by another will also be put an end to. In proportion as the antagonism between classes within the nation vanishes, the hostility of one nation to another will come to an end."

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Such, briefly, is a summary of Marxian teachings. I realize [415] it is inadequate. But you cannot sum up nearly a century of Marxian teachings in the course of an hour or two. It is beside the point to consider whether Marxian philosophy is revolutionary, or radical. Such words are symbolical and lack definite connotation. The question is: Does it advise or advocate the overthrow of government by force or violence?

There is little new or startling in the attitudes of Marx and Engels towards the overthrow of government. When legal means have been wanting for redress of oppression, men have resorted to "illegal" means in the form of revolutionary action. Thus we find a justification for the American Revolution in the Declaration of Independence. Great Americans have endorsed such action. Abraham Lincoln, following in the footsteps of John Locke, viewed the revolutionary overthrow of government as a right. In his speech in the U. S. House of Representatives, arraigning President Polk for war against Mexico, he said (Life and Works of Abraham Lincoln, Centenary Edition, in Nine Volumes, Miller (ed.) New York, Current Literature Publishing Co., 1907, Vol. II, p. 128:)

> "Any people anywhere being inclined and having the power have the right to rise up and shake off the existing government, and form a new one that suits them better. This is a most

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

valuable, and a most sacred right—a right which we hope and believe is to liberate the world. Nor is this right confined to cases in which the whole people of an existing government may choose to exercise it. Any portion of such people can revolutionize and make their own of so much territory as they inhabit. More than this a majority of any portion of such people may revolutionize, putting down a minority, intermingling with or near about them, who may oppose this movement. Such minority was precisely the case of the Tories of our own revolution. It is a quality of revolutions not to go by old lines or old laws; but to break up [416] both, and make new ones."

Political philosophers from Plato on have viewed revolutions as undesirable and have sought ways and means of avoiding them. The prevention most frequently prescribed is a peaceful adjustment of the conflicts arising from the gross inequality in the distribution of wealth and power. Thomas Jefferson was unique in that he not only viewed revolutions as a right, but considered rebellion a good tonic for the body politics. Commenting on Shay's Rebellion, he said (Jefferson's Writings, 10 vols., Ford, P. L. (ed.) G. P. Putnam's Sons, 1892, Vol. IV, p. 467:)

"What signify a few lives lost in a century or two? The tree of liberty must be refreshed

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

from time to time with the blood of patriots and tyrants. It is its natural manure."

In a letter to James Madison in 1787 he wrote (Ibid., P. 362:)

> "I hold it that a little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical. Unsuccessful rebellions indeed generally establish the encroachments on the rights of the people which have produced them. An observation of this truth should render honest Republican governors so mild in their punishment of rebellion, as not to discourage them too much. It is a medicine necessary for the sound health of government."

A similar attitude is reflected in a letter addressed to Mrs. John Adams in the same year (Ibid., p. 370:)

> "The spirit of resistance to government is so valuable on certain occasions, that I wish it always to be kept alive. It will often be exercised when wrong, but better so than not to be exercised at all. I like a little rebellion now and then. It is like a storm in the atmosphere."

In summing up the utterances of the founders of Marxian Philosophy, we can say that what they desired to establish was a new [417] economic order and not a new political system or a new form of

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

government. In so far as they were concerned with politics at all, it was only because they regarded the state as the primary institution by means of which the prevailing economic system was maintained. Since they deemed this to be true, it followed that the economic question was also a political question, and, in order to achieve the desired economic reform, it was necessary to gain control of the machinery of the state. Thus it was that they repeatedly defined the goal of their movement to be "the conquest of political power."

Contrary to popular belief, however, they did not specify the means by which political power was to be obtained. It is true that in some portions of their writings, notably the earlier ones, Marx and Engels seem to intimate that the seizure of power was to be obtained by force. This is not surprising when we consider that in the Europe of their youth the barricade was the normal manner by which one political regime was superseded by another.

Democracy is the only system of government yet invented which provides a legal and peaceful procedure by which one set of rulers may be supplanted by another; and democracy did not exist in most of the countries in which Marx and Engels lived and in terms of which they thought. And it seems to be inevitable that where no legal means exist for the redress of political grievances, men will justify the use of "illegal" means by proclaiming the right of

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

revolution. This is what John Locke did in order to guarantee inalienable rights. Abbe Sieyes took a similar position in justifying the overthrow of the old regime in France. Patrick Henry and Thomas Jefferson also resorted to this view for the simple reason that no legal or orderly procedure was available. As for Washington, blunt and forthright farmer and soldier, he did not harangue about the right of revolution; he simply revolted. [418]

Though Marx and Engels were willing to countenance the use of "illegal" means in countries where no other methods were available, they were quick to point out that where other agencies existed they were preferable to the street fight and the barricade. I have already noted that Marx specifically mentioned both England and the United States as countries where power might be achieved by democratic procedure. When it is remembered that England and the United States at that time were the only two major countries where the democratic process held sway, the import of these two exceptions is clear. It may even be construed as an injunction to his followers that where the democratic method is available, it should be used. Engels, writing in the latter years of his life, when democratic procedure had become more widely adopted and firmly entrenched, was especially insistent against the use of illegal or violent methods. Thus he wrote (Introduction to The Class Struggle in France, p. 25:)

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"The time of surprise attacks, of revolutions carried through by small conscious minorities at the head of unconscious masses, is past."

The proletariat could and should rely on the ballot because they are or will be a majority and in a free and popular government it is the majority which rules. Engels implies that in the end it is the opponents of Socialism, rather than the Socialists themselves, who will be forced to resort to illegal means.

Lenin seems to have followed in the footsteps of Marx and Engels both in theory and practice. In his famous April Theses (May, 1917,) written only a few months before the Soviets seized power, he did not advocate the overthrow of the government by force, but advised immediate agitation "for a republic of Soviets of workers', landworkers', and peasants' deputies embracing the whole country and all strata of the workers." (Encyclopaedia of the [419] Social Sciences, vol. II, p. 627.) It was not until the existing political and economic order had broken down that the Soviets organized the armed seizure of power which constituted the November (October) Revolution. (Ibid.)

Finally, we should note that advocacy of violence is incompatible with the fundamental premises on which Marxism rests. Advocacy of violence implies that men can be induced to revolt by reasons of

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

appeals addressed to them by an advocator. More explicitly it implies that men act by reason of persuasion rather than because conditions impel them to act. This is a notion Marx flatly rejected.

Marxism is basically a theory of history which assumes the shape of a science of social development. As such it takes its stand on the theory that a certain sequence of historical developments is predictable. In so far as the development is predictable it may be controlled, but only within certain limits. Marx argued that Communism would come not because men willed it but because it was an inevitable consequence of historical development. And so with revolution. Men would not revolt because they were urged to revolt—it would be futile to ask them to do so—but only because they would be forced by their conditions to take such extreme action.

I have tried to explain as briefly and clearly as possible the views of Marx, Engels and Lenin on the role of violence in revolution. I do not presume to know or to say whether the Communist Party of the United States adheres to these views. However, if the Party does advise or advocate the overthrow of the government of the United States by force or violence, it is departing from the teachings [420] of Marx and Engels, not only in theory but in practice.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Whatever else one may think of these gentlemen, he must admit that they possessed intelligence and were given to realistic appraisals of the conditions and possibilities about them. That they would have advised a relative small band of their followers to advocate the overthrow of the government of the U. S. A. by force or violence is too ridiculous to warrant consideration.

(Whereupon, at 3:35 o'clock p. m., and adjournment was taken to August 17, 1939, at 9:30 o'clock a. m.) [421]

August 17, 1939

WALTER THOMPSON,

recalled.

Cross Examination

(continued)

By Mr. Shoemaker: Q. Professor Thompson, I want to hand you some of the Government's exhibits, being books which have been introduced into evidence here, and ask you to pick out separately and distinctly, if you will, please, different piles of the ones you have read and the ones you have not read.

Trial Examiner Landis: Off the record.

(Remarks off the record)

A. These I have not read (indicating.)

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Trial Examiner Landis: Certain exhibits having been shown to the witness, the witness states that he has read the following exhibits:

Government's Exhibit 98, Government's Exhibit 59, Government's Exhibits 60, 57, 81, 71 and 69.

He stated that he had not read Government's Exhibits 90, 61, 64, 58, 72, 91, 89, 93, 82, 70, 73, 74, 75, 77, 62, 79, 76, 66, 67, 65, 68, 83, 78, 80, 63 and 88.

By Mr. Shoemaker: Q. Professor, how many volumes of Marx are there in existence?

A. Well, in the Gesamtgabe, that is, of Marx and Engels, there are 15 volumes. That is the most complete set.

Q. Well, then, there are not 40 volumes; is that correct, as far as you know?

A. There may be 40 volumes. This is a compilation. It is in 15 volumes.

Q. Do you know how many have been translated into English? A. No; I don't.

Q. Have you read those that are in German, or have you read them in English?

A. I have read them in English.

Q. You have?

A. Yes. What I have read of Marx has been in English. [422]

Q. Do you know any Communists, or persons who are members of the Communist Party of the U. S.?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Oh, I couldn't say I know them. I have met one or two.

Q. Will you tell us who they are, please?

A. Well, I met Lincoln Steffens just to shake hands with him after a lecture.

Q. Do you know whether he is a Communist or not? A. I am not sure.

Q. Do you know any other Communists?

A. I met Betty Gannett.

Q. Anyone else, Professor?

A. That is all.

Q. Have you ever been to Russia.

A. I have not; no.

Q. Will you tell us when you began to study Communism?

A. Oh, it must have been along in 1911 when I was in college.

Q. Will you tell us when you began an intense study of the subject, if such is a fact?

A. I would say, about ten years ago.

Q. Have you continued your study?

A. I have continued to study, yes.

Q. I notice you picked out certain books of the Government's exhibits. Will you tell us any other books whose names you recall which you have studied in connection with this subject?

A. Well, there are Marx; a number of books by Marx; the "Critique of Political Economy"; and Marx's "Wage, Labor and Capital"; "Value, Price

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

and Profit"; "The Civil Wars in France"; "The Class Struggle in France"; "The Brumaire of Louis Napoleon"; and "Poverty of Philosophy."

Q. That is sufficient unless you want to name some others, Professor. Have there been any others of considerable number, for instance, that you have read on this subject?

A. Oh, yes, there are others. I neglected to name one; that is "Capital."

Q. "Capitalism"? A. "Capital."

Q. Is your knowledge of the Communist Party based entirely on the written word, or your study of the books and pamphlets and articles?

A. Yes. [423]

Q. You have no particular knowledge, I take it, of the practices of Communism? A. No.

Q. Would you know whether or not the Communist Party would be likely to put on a front as a blind to cover up their practices?

A. Oh, I wouldn't know about that.

Q. Do you believe, after your study of Communism, that the philosophy of Marx or Lenin would be advantageous to the Government of the United States, in so far as supplanting our democracy is concerned? A. No; I wouldn't say that.

Q. Do you have any knowledge of any particular principles of the Communist Party which you would believe would be advantageous to adopt in the United States? A. No.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. I gather from your article, Professor, that you are satisfied that the Communist Party does not believe in the overthrow of the government by force and violence; is that correct?

A. Not the Communist Party; my contention is that if they advocate that, why, they are not true to Marxist teachings.

Q. Well, doesn't your last statement on the last page of your article indicate a little bit more than that, Professor? You are talking about Marx and Engels there; the last two sentences:

> "Whatever else one may think of these gentlemen, he must admit that they possessed intelligence and were given to realistic appraisals of the conditions and possibilities about them. That they would have advised a relatively small band of their followers to advocate the overthrow of the Government of the United States by force or violence is too ridiculous to warrant consideration."

Then, if what you say is true, in view of the Government's charges in this case, you would state, then, that if the Communist Party in the U. S. A. does believe in the overthrow of the government by force and violence, they are disregarding the teaching of Marx; is that correct?

A. That is quite correct. [424]

Q. Would that be equally true of Lenin—the teachings of Lenin?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Well, Lenin repeatedly asserted that he was following Marx.

Q. Yes, I understand that he asserted it, but if I understand language correctly—and we will come along to that later on, whatever he may have asserted—it is the Government's contention that he in fact did believe in the use of force and violence, as expressed in the written word in his various booklets.

A. But he qualified that, that you had to have a revolutionary situation.

Q. Well, of course, I know that contention that the revolutionary situation must exist in order that force and violence may be used; but it is the Government's contention that without the revolutionary condition to which you refer and Mr. Lenin refers, the Communist Party is working for the overthrow of the Government of the United States by force and violence. So we will have to come to that a little bit later on, too. Do you think that a man would be a good union man in the American labor movement if he does not believe in Democracy?

A. No; I don't think so.

Q. You haven't read "The Problems of Leninism," have you? You have read the "Foundations," I take it, but not——

A. (Interrupting) I should have mentioned that some of those I have read, years ago. I picked out those that I have read.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. Well, I will pass those up. I want you to understand, Professor, before I go further, that there are absolutely no trick questions in any manner, shape or form. It is simply a clear statement, so far as I can make a question clear, and I am asking you to respond to it with the same thought in mind, and not to feel that you are to be concluded by what might be termed a statement made while off guard. I have no intention of propounding any such questions or concluding you; so, if you don't understand any question [425] that I ask, please ask me to repeat, will you? Will you tell us what you believe is the dictatorship of the proletariat and its purpose?

A. Well, I wouldn't express my own belief. I would have to take the statement of Lenin with regard to the dictatorship of the proletariat.

Q. All right, sir. What does Lenin state is the dictatorship of the proletariat, as far as your recollection goes?

A. Well, I have covered that in my written statement. I can summarize the thing briefly.

Q. Would you, please?

A. I can summarize it briefly by saying that you have a proletariat and also a large group of peasants and tradesmen, small tradespeople, constituting a vast majority of the population; and that after they had assumed control the dictatorship of the

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

proletariat would carry on during the period of transition from capitalism to socialism.

Q. And if the dictatorship of the proletariat does not result in what the Communists think, that is to say, the establishment of Communism, what do you think will be the result, so far as the dictatorship of the proletariat is concerned?

A. I am not prepared to say.

Q. Will that condition exist, to your belief?

A. I am not prepared to answer that; I don't know.

Q. In your opinion does the mere fact that a specified group calls itself Communists prove that there is nothing in their teachings but pure Marxism as a theory? A. No, I wouldn't say that.

Q. Could you visualize a party calling itself Marxist in theory and at the same time directing its activity and advocating force and violence to obtain the same objectives as Marxism?

A. I couldn't see that.

Q. You don't think that would be possible?

A. It might be possible.

Q. Do you think it would be probable? [426]

A. That is, using Marx as a basis for their theories?

Q. Yes.

A. And then advocating force and violence?

Q. Yes.

A. I don't think it would be probable.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. Do you think it would be true as far as Leninism is concerned?

A. Well, Leninism is really Marxism brought up to date.

Q. In other words, then, I take it that you believe that Leninism is simply a follow-through for Marxism; is that correct?

A. It is applied Marxism to a more modern situation.

Q. You would say definitely that Marx did not advocate force and violence; is that correct?

A. Well, I wouldn't say definitely. In his earlier writings there is an implication that you may have to resort to force and violence.

Q. I recall your statement.

A. And we have to keep in mind that is the only recourse that any class would have to replace another class. In his later writings he advises against force and violence very definitely.

Q. Do you think that Lenin followed him in that theory?

A. Well, the history of the Revolution in Russia would indicate that Lenin did.

Q. Do you regard his writings, the writings of Lenin, as indicating that no force and violence should be used other than the so-called chaotic period that is bound to ensue or the revolutionary period that will obtain?

A. Well, we would have to keep in mind the

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

time at which those writings appeared and also the conditions under which they were written.

Mr. Shoemaker: Read the question, please.

(The question referred to was read by the reporter as above recorded)

By Mr. Shoemaker: Q. I don't think your answer was exactly responsive, Professor.

A. My answer was that we have to keep in mind the time at which his writings took place and also the conditions under which they took place.

Q. Granted that is a fact, do you believe that Lenin didn't depart [427] in any manner, shape or form from Marx in so far as force and violence is concerned?

A. Well, if we take the "State and Revolution," you will find some rather violent expressions there, but that is an answer to the anarchists and certain social democrats. You also have to keep in mind that that work came out between the February revolution and the October revolution in 1917.

Q. Do you believe that a construction of his statements, as you have it, means that a revolutionary period must obtain before he advocates the use of force and violence?

A. Yes; I would admit that you have to have a revolutionary situation.

Q. Do you believe, for instance, that he might advocate the use of force and violence to obtain or to further so-called revolutionary period?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. That would go contrary to the teachings of Marx.

Q. Granting that is a fact, isn't it possible to construe Mr. Lenin as advocating exactly that?

A. As advocating what?

Q. That force and violence could be used to further the interests of Communism. In other words, that the revolutionary period might not merely happen, but could be made by certain activities of the Communist group?

A. Well, not activity involving force and violence. There would be any number of other activities, that is, organization and the developing of party and work of that sort.

Q. Then your answer is that Mr. Lenin did not advocate the use of force and violence to further the so-called chaotic period or revolutionary status or period which he anticipated was bound to follow: is that correct? A. Will you repeat that?

Mr. Shoemaker: Read the question, please.

(The question referred to was read by the reporter as above recorded)

A. From my reading of Lenin I would say that is not correct; that is, he did not advocate the bringing about of a revolutionary [428] situation.

Q. Are you familiar with the program of the Communist Internationale? A. No; I am not.

Q. Do you have any knowledge of it at all, Professor?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Oh, just what any other man might have from reading newspapers.

Q. Are you familiar with any of the pamphlets —Withdraw that. Would you say that the present regime in the Soviet Republic came into power by force and violence, or without force and violence?

A. Well, we would have to go back, that is, to the history of—to 1917, and the only agency there through which you would find a popular expression were the Soviets, and the Soviets were not created by the Bolsheviks; they go back to 1905. And in the provisional government there was no chance for any popular expression, to the provisional government. The only popular institutions you had were the Soviets, and during the period from February on, after the February revolution, the Bolsheviks were gaining a majority in the Soviets; and in July, when Kornilov tried to suppress the Soviets, that is, by a military group, we found the masses swinging over towards the Soviets, and most of those were the Bolsheviks.

Q. But the present regime in the Soviet Republic, as a matter of fact, came into power by force and violence, didn't it?

A. Well, in some places. In Petrograd there was practically no force or violence.

Q. Did force and violence obtain in any other place, in order to put the present regime in Russia in power?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Well, in Moscow you had a little more violence, because military cadets there opposed the movement.

Q. Then your answer, generally speaking, is, if I am correct—and you can correct me if I am not—that the present regime in Russia did not come into power by the use of force and violence, except in isolated instances; is that correct?

A. Well, that is probably too broad a statement, because—— [429]

Q. (Interrupting) Well, then you make it, if you will, please.

A. We had a long period of counter-revolution where there was force and violence, that is, where the old regime with the assistance of allies coming in there, a long period of civil war, but the revolution had already taken place.

Q. You think, then, that the present regime in Russia simply took over, and if any force and violence ensued it came after the coup had taken place: is that correct?

A. That was correct. In Petrograd and in Moscow—they were really the only places where they assumed control at the beginning.

Q. You don't regard, I take, Communism merely as a theory?

A. Oh, no, not entirely as a theory.

Q. I want to take your article there, if you will, Professor. I am going for the time being to skip

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

over a few pages—in fact, quite a few, going to page 31. You will notice there that you refer to a statement by Abraham Lincoln. I hardly think that you would state or contend that the quotation on that page from Abraham Lincoln is a justification in any manner for fomenting discord and creating class hatred with the ultimate aim of over throwing the Government of the United States, would you? A. No.

Q. Notice again the last paragraph on page 31:

> "Political philosophers from Plato on have viewed revolutions as undesirable, and have sought ways and means of avoiding them. The prevention most frequently prescribed is a peaceful adjustment of conflicts arising from the growth in equality in the distribution of wealth and power. Thomas Jefferson was unique in that he not only viewed revolution as a right, but considered rebellion a good tonic for the body politic."

You are not quoting what follows there from Jefferson with approval, I take it, are you?

A. No.

Q. You are simply adverting to it in connection with your article; [430] is that correct?

A. Yes, to show that Communist—or the Marxist theory does not have a monopoly on revolutions.

Q. Now, going down to the last paragraph on page 32:

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"In summing up the utterances of the founders of Marxian philosophy, we can say that what they desired to establish was a new economic order and not a new political system or a new form of government."

Is this true of Lenin, of the Leninist philosophy as well as the Marxian philosophy?

A. Well, there we have to keep in mind that Lenin was thinking in terms of Russia, and in terms of Tsarist Russia.

Q. But it was a follow-through from the Marxian philosophy, wasn't it? A. Well, how——

Q. (Interrupting) Leninism was a follow-through from the Marxian philosophy, wasn't it?

A. Yes, that is generally true.

Q. Do you believe that it was applicable to Lenin as well as Marx, notwithstanding the fact that Lenin was treating as a later day as distinguished from Marx who was treating as an earlier day?

A. I should say it wouldn't be true of Lenin, as far as the Russian situation was concerned.

Q. Certainly Lenin was not trying solely to establish a new economic order, isn't that correct; that wasn't what he was concerned with at that time?

A. Well, that was what he was concerned with, but how you could ever establish a new economic order under Tsarist government is—well, I don't see how you could do it.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. Well, I am going to come to that later on, but I just want to get your views now in regard to that. You don't see how you could do it?

A. Not with the——

Q. (Interrupting) You don't see how you could establish economic reform without a political change of government? You surely don't mean that?

A. Well, I was thinking in terms of [431] the feudalistic setup in Russia.

Q. And I am thinking in terms of Marxism and Leninism philosophy. The point I have in mind is that whatever views that Marx might entertain with regard to economic reform, and whatever views he might hold with regard to the conquest of power being necessary to attain that economic reform, it didn't apply with equal force to Lenin; it was something separate and distinct that Lenin had in mind, and it is something separate and distinct that Lenin had in mind ever after that. In other words, there was just as sharp a cleavage from Lenin's philosophy of government as distinguished from Marxian philosophy of government, as there is from the Stalinistic theme as distinguished from the Leninistic theme. Now, do I make myself plain there? I say that they are separate and distinct theories and philosophies. Now, are you saying that they are one and the same thing?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Well, it wouldn't be one and the same thing. At the same time, we have to consider how that theory was applied.

Q. I grant that that was a fact, but I am going to bring out, or expect to bring out, in connection with the writings of Lenin and Stalin, that they are something separate and distinct and that something separate and distinct is contemplated by the Communist Party of the U. S. A., and we expect to show that they believe in the overthrow of the Government of the United States. That is the point I want to get clear in my mind as to your views in regard to that.

Trial Examiner Landis: I would like to interrupt there, Mr. Shoemaker. Is that the Government's contention, that Communism is a political theory—that the political theory of the Communist Party of the United States of America is not only something different from the political theories of Marx, but it is so different that Marxism has no relationship to it? [432]

Mr. Shoemaker: Oh, no, I don't say that. I say this:

It is the Government's theory—that is only in part, but I say this: I am not concerned with trying to show that Marxian philosophy advocated the overthrow of the Government of the United States, or any other government, by force and violence particularly; I am concerned with trying to show that

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Lenin advocated it definitely, beyond the peradventure of a doubt, in his writings, and I believe that Stalin went even further than Lenin, not only in his advocacy of certain philosophies but in his absolute actions. In other words, I believe that Stalin recognized, after he came into power, that the theories or the philosophies of Lenin were outmoded, they had passed their day, and Stalin has shown by his subsequent actions in getting rid of his so-called inner circle that he wasn't following the Marxian philosophy himself by a long way. And I say that Lenin by his writings clearly showed that he wasn't following the Marxian philosophy either.

Trial Examiner Landis: I would like to get that position thoroughly clear. Now, may I restate it?

Mr. Shoemaker: Yes.

Trial Examiner Landis: So I can under the contention. That whatever the Marxian philosophy advocated with reference to means whereby this revolution is to be brought about, Lenin, followed through by Stalin and perhaps, we will say, emphasized by Stalin, insisted that means that would arise out of the revolutionary situation to which Marx refers should be the advocacy of force and violence and that shaping of Marxism by Lenin and Stalin is essentially embodied in the political doctrine and teachings of the Communist Party of the United States?

Mr. Shoemaker: That is right, in part. Let me

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

make this clear to your Honor. Two professors have now testified, as I understand it, that the Marxian philosophy of government contemplated only a [433] revolutionary situation where Marxist theories would be put into practice. That Marxian state of revolution, without regard to what the professors say, I don't agree with or their conception of this certain period that will exist when the Marxian philosophy comes into power or being. But I am trying to meet their statement in that connection. Now, I say that, meeting that, Lenin went even much farther than Marx did, because Lenin wasn't so much concerned with the revolutionary period or era that would exist. Lenin was working for the international proletariat. He was working to accomplish something which he believed, as the professors state, would change not only the political shades in the world, but would change as well the economic shades. Stalin, after coming into power, recognized that not only had Marx been wrong, but Lenin as well was wrong, and that in order to accomplish these things which he believed were the solution of the problems of the world, put into execution a much farther, or a farther trend in that of action. Have I made myself clear?

Trial Examiner Landis: I would like to pursue that further to see whether I correctly state your contention again:

That being, we will say, the political theses of Stalin, those political theses are then being trans-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

lated by the Communist Internationale which, in turn, uses a subsidiary, the Communist Party of the United States—I use the term merely as a symbol—in order to carry through these theses of Stalin?

Mr. Shoemaker: That is correct. Don't misunderstand that I am admitting for one instance in my remarks that Marx contemplated a peaceful revolution. I do not think he did.

Trial Examiner Landis: I understand. Your contention is, despite that, whatever may be said with reference to Marx, these things are true with reference to any Stalin?

Mr. Shoemaker: That is the reason I asked the question whether [434] this reference to Marxism is equally applicable to Lenin.

Q. If it was necessary to achieve economic reform by what they have termed the conquest of political power—that is stated in your article on page 33—what is the basis?

A. The basis for what?

Q. The basis for that statement:

> "Since they deemed this to be true, it follows that the economic question was also a political question, and, in order to achieve the desired economic reform, it was necessary to gain control of the machinery of the state. Thus it was that they repeatedly defined the goal of their movement to be 'the conquest of political power.'"

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

What is the basis for that statement?

A. You mean in Marx or Engels?

Q. No; of your statement.

A. You asked for the basis of it?

Q. You say "Since they deemed this to be true." I am just wondering how you arrived at that conclusion.

A. Well, we find in the writings of Marx and Engels and Lenin that you gain political control because the state is the one agency by which you may realize your economic reforms.

Q. You don't have any recollection of just where you find that, do you, Professor? In the abstract that might be true, but in order to obtain economic reform, so far as we see it, the conquest of power is not necessary. You could obtain economic reform without the conquest of power, state or otherwise?

A. I should say that the conquest of power does not mean conquest by force or violence necessarily.

Q. Well, let's say without force and violence. The conquest of power isn't essential or necessary to effect economic reform, is it?

A. You may have economic reform outside of political power.

Q. The point I had in mind, which I read from your article— [435] going on there to the second paragraph on page 33:

"It is true that in some portions of their writings, notably the earlier ones, Marx and

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Engels seem to intimate that the seizure of power was to be obtained by force."

It just didn't—it says: * * * "seem to intimate that the seizure of power was to be obtained by force."

Didn't they actually say so?

A. Well, in the Communist Manifesto, I don't know exactly how the words read, but you have a strong implication that that would be the means that would be employed.

Q. It struck me it was a little more than that with you. I am perfectly willing to take your statement on that. Going over to page 34, and considering in its entirety those statements on that page: Even though Marx and Engels mentioned England and the United States as countries where power might be achieved by democratic procedure, do you know whether or not Browder has indicated in his writings, at least at times, the contrary?

A. To the contrary of this?

Q. Yes, in so far as England and the United States is concerned, and particularly the United States?

A. I don't know that he has implicated that.

Q. Well, we will come to that later on, too. I want to ask you some of your views with regard to his statements in his books. If you don't know it, you don't know the contrary, I take it, either, do you?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. I haven't read much of Browder. I have read "What is Communism?"

Q. I think that is the only book here, Professor, that you have read; is that correct?

A. That is correct, by Browder.

Q. Going down now on page 34:

> "Lenin seems to have followed in the footsteps of Marx and Engels both in theory and practice. In his famous April Theses [436] written only a few months before the Soviets seized power, he did not advocate the overthrow of the government by force, but advised immediate agitation 'for a republic of soviets of workers,' land workers' and peasants' deputies embracing the whole country and all strata of the workers.' It was not until the existing political and economic order had broken down that the soviets organized the armed seizure of power which constituted the November (October) revolution."

That might be true so far as Russia is concerned, but so far as the United States is concerned do you believe it to be true?

A. Well, Lenin's account for a revolution puts it very clearly. He mentions that a revolution will occur when the upper class can no longer obtain the status quo and when the lower classes refuse to maintain it so when they come to that impasse, as

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

it happened in Russia, you have a revolutionary situation and you have a transfer of power from one class to another.

Q. Do you believe it applies with equal force to the United States? A. No; I do not.

Q. Take the second paragraph on page 35, Professor:

> "Marxism is basically a theory of history which assumes the shape of a science of social development. As such it takes its stand on the theory that a certain sequence of historical developments is predictable. In so far as the development is predictable it may be controlled, but only within certain limits. Marx argued that Communism would come not because men willed it, but because it was an inevitable consequence of historical development. And so with revolution. Men would not revolt because they were urged to revolt—it would be futile to ask them to do so—but only because they would be forced by their conditions to take such extreme action."

Do you think that Lenin and Browder, in their writings, [437] followed through in the Marxian philosophy as expressed in that statement?

A. I don't know about Browder. Lenin did in connection with the Russian Revolution.

Q. You feel confident of that, that Lenin did?

A. Yes; that he did in actual practice.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. So far as your last paragraph there is concerned, Professor:

> "I have tried to explain as briefly and clearly as possible the views of Marx, Engels and Lenin on the role of violence in revolution. I do not presume to know or to say whether the Communist Party of the United States adheres to these views. However, if the Party does advise or advocate the overthrow of the Government of the United States by force or violence, it is departing from the teachings of Marx and Engels not only in theory but in practice. Whatever else one may think of these gentlemen, he must admit that they possessed intelligence and were given to realistic appraisals of the conditions and possibilities about them. That they would have advised a relatively small band of their followers to advocate the overthrow of the Government of the U. S. A. by force or violence is too ridiculous to warrant consideration."

Well, of course, the Government differs with you directly, otherwise, I wouldn't be interrogating you right now. I would have much preferred to have simply let your article go into the record without any interrogation. But in view of those statements, I felt it necessary, in view of the fact that you have qualified as an expert, to go into these things. Now, supposing that Marxism is basically a theory, you

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

would hardly claim or contend that it assumes the shape of a science of social development, exact or definite or fixed, would you?

A. No, not a definite, fixed science in the terms of physics or chemistry, or something like that.

Q. Conceding for the moment, admitting for the moment without concluding the Government in any way and solely for the purpose of [438] argument, that Marx did teach what you state in the last paragraph on page 36, a lot of water has gone under the bridges since that time, of course. I believe you will concede that if his followers might obtain the establishment of Communism in the United States it is not too ridiculous to believe that that is the fact in the light of what Mr. Browder has stated, and what Mr. Lenin has stated; is that correct?

A. Well, I would qualify that. I don't know about Browder, but I would——

Q. (Interrupting) You have read "What is Communism?" I am going to read from that and ask your views on that later. Go ahead and finish. Pardon me for interrupting.

The Witness: Will you read the question, please?

Mr. Shoemaker: Read the question.

(The question referred to was read by the reporter as above recorded)

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Well, for the sake of argument, I would say that Lenin and Browder both have followed in the footsteps of Marx.

Q. Then you wouldn't concede, for instance, for a minute, that Lenin and Browder would go beyond the philosophy and theory and the practices of Marx; is that correct?

A. That is correct.

Q. You don't know whether Lenin advised the workers to overthrow the Government of the United States, do you?

A. No; I don't know that he ever did.

Q. I think you said you didn't know anything about the application of the theories of Marxism and Leninism. That is correct, isn't it, Professor, that you don't know anything about the application of the theory, in other words, the practices and so forth of Marxism and Leninism?

A. Not the contemporary practices.

Q. Has the Communist Internationale and its various sections, including the American section too, consistently applied the Marxist and Leninist theory in developing the program of Communism?

A. I don't know. [439]

Q. You wouldn't be able to state that?

A. I wouldn't be able to state.

Q. I notice that you state there on page 14 of your statement, you asked the question on page 14 of your article, Professor: "What is a revolution?" May I ask you that question?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. In my written statement it took me about seven pages single-spaced to answer that question. Briefly it is this: It is a transfer of power from one class to another.

Q. All right. I think you would concede that that wouldn't necessarily contemplate peaceful means and that force and violence might be used?

A. Force and violence might be used.

Q. Do you know anything about the establishment of the Hungarian Soviet Republic?

A. No.

Q. Nothing at all?

A. Well, I know that they had a Soviet Republic there for a few months in 1919 or 1920; I have forgotten which.

Q. Do you know why it was overthrown?

A. No; I don't.

Q. Do you know anything about the social democratic party there? A. In Hungary?

Q. Yes. A. No; not in Hungary.

Q. Well, may I make just a suggestion to you off the record——

Trial Examiner Landis: Off the record.

(Remarks off the record.)

Mr. Shoemaker: Q. Do you know anything about the establishment of the Communist leadership in the Bavarian Soviet Republic in April of 1919? A. No.

Q. You don't know how long that obtained, do you? A. No: I do not.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. But a very short time, Professor. I suggest off the record——

(Remarks off the record.)

Q. Do you know anything about the uprising in Germany in March, 1931?

A. In what connection was that?

Q. Where the Communists came in, the Communist Party came in and [440] took over, or tried to take over? A. In '31?

Q. In '21; March, 1921.

A. Well, I wouldn't be prepared to talk on that. I recall it, that is, from newspaper accounts at the time.

Q. You don't know anything about those in Saxony, do you, about 1923? A. No.

Q. Professor, do you know the difference between the Marxist group represented by the Socialist Party, and the Communist Party?

A. Where?

Q. In the United States.

A. Well, of course, I know they have a Socialist Party and the Communist Party.

Q. Do you know the difference between the two?

A. No; I wouldn't know the doctrinal points there that they would divide on. They both claim to be Marxian.

Q. Do you know whether or not the Socialists want to bring about a Socialist state through the ballot, or the use of the ballot; do you know that to be a fact? A. Yes.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. Do you know what the Communists say about that?

A. No. I thought they all wanted to bring it about by the use of the ballot.

Q. I think you have read "Why Communism?" by M. J. Olgin, haven't you?

A. Yes, several years ago.

Q. Well, the Communists say that it is impossible. Now, Olgin himself said that it is impossible. I can go into a long discussion of that, but I don't want to do it. But I do want to call your attention to that fact in passing.

Q. Well, on Olgin, in reading it I was not impressed with his ability on the Marxian theory, and I felt throughout that there was too much foam and too little beer in that volume. It reminded me of my boyhood days when the populace used to rant against Wall Street.

Q. After all, it is one of the Government's Exhibits—(Laughter)

Mr. Shoemaker: Well, maybe this will make you laugh a little bit more: It is published by the Western Worker, and it is sold in Communist bookshops. And you may laugh as much as you want about [441] Government's exhibits, but before you get through you have got to answer them or you have got to admit that the Government's charges are true; and I have yet to see anything, even the slightest, which indicates that you are able to answer them; however much you may get humor out of the situation.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Trial Examiner Landis: I think the humor was interjected by the Professor.

Mr. Shoemaker: The Communists thought enough of it to print a quarter of a million copies, and that is the Communist Party of the United States. As a matter of fact, many of these documents, even these documents which you have picked out here, Professor, are circulated, distributed, published, perhaps printed, and so forth, by the Communist Party of the United States; and that being the fact, it is a portion of the Government's case. And that includes Mr. Olgin as well as the others.

Q. Do you know whether it is a fact that the Communist Party advocated immediate relief measures? Do you know that?

A. Yes, they have.

Q. Do you believe that they advocate that in the view that they will be of any special advantage to labor? A. Oh, I don't know.

Q. Did it occur to you that they might advocate that as a means of attracting others to the Communist Party?

A. That never occurred to me any more so than any other political party advocating relief might attract members.

Q. Well, there has been testimony somewhat along that line here, Professor. Do you believe that the Communist Party ever strives to bring about a revolutionary situation?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Well, if they do they are not following Marx. You can't bring it about; it is something that comes by economic conditions and by historical development.

Q. Do you know that they say that the revolutionary situation doesn't just happen, it is made?

A. Well, it is made—that is, [442] it is made by men in creating their environment.

Q. You think, then, they wouldn't help in any manner, shape or form to create a condition where a revolutionary situation would be developed or helped along?

A. Well, according to Marx, they couldn't, that is, by advice or advocacy.

Q. But according to Lenin, or perhaps Browder, it could, couldn't it?

A. Well, according to Lenin you couldn't do it until a revolutionary situation arises, that is, where you had an impasse where the one class couldn't hold on and the other class wouldn't care to hold on.

Q. I am sorry you haven't read more books, Professor, because I would like to argue that out with you. There is a lot more you could have read.

A. Well, I have read a number that I would like to be quizzed on. I enumerated about 40 of them, I think.

Q. Well, naturally you would like to be quizzed on them, but I am quizzing you on the things I think are pertinent, and after all that is the thing

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

we want to bring out. You have offered yourself as an expert here, and presumably you would read the ordinary books, and those that the Government has introduced are just the ordinary books. Of course you would like to be quizzed on other books, and I have no doubt but that you could enlighten us on a lot of other books and a lot of things in there, too. I want to read you something from Earl Browder's "What is Communism?"; then I am going to ask you some questions on it:

> "The transfer of state power from the capitalist to the working class which begins the social revolution can be accomplished only under certain conditions which have an objective existence independent of the desires of the struggling classes. There must be what we Communists call the revolutionary situation. In this revolutionary situation the Communist Party, which has won the active support [443] of the majority of the working class and of the decisive sections of the other exploited classes, wins some of the armed forces to its side and leads the effective majority of the population to the seizure of state power.
>
> "There can be no such first step if there is no revolutionary situation, or if the Communist Party has failed to rally the support of the majority of the population.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"After this first step of taking power has been realized, the workers make use of the state power to take possession of the instruments of production."

I want to ask you now whether you think that the revolutionary situation which Mr. Browder refers to contemplates the use of force and violence to accomplish the purposes?

A. Well, according to that statement, when that situation arises they would have the majority of the population, that is, the working people and decisive groups, and a majority of the other groups.

Q. Well, I don't agree with that construction, and I will read it again to you:

"In this revolutionary situation, the Communist Party, which has won the active support of the majority of the working class, and of the decisive sections of the other exploited classes, wins some of the armed forces to its side and leads the effective majority of the population to the seizure of state power."

Now, they don't say anything about the majority of the people in the commonwealth numerically, anything of the kind; they are talking about the seizure of the state power. They are talking about armed forces. "Seizure" and "armed forces" mean something. What in your judgment do they mean? Do you think that force and violence is contemplated there?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Well, I still maintain that you would have a majority, and you would also have some of the armed forces on your side. [444]

Q. And I still maintain, if I understand United States language, that that doesn't mean a majority, and he doesn't say it either.

A. That you would have a majority of the working people?

Q. Let us read it again.

A. And other groups.

Q. Let us read it again, if you want to:

"In this revolutionary situation, the Communist Party, which has won the active support of the majority of the working class and of the decisive sections of the other exploited classes, wins some of the armed forces to its side and leads the effective majority of the population to the seizure of state power."

Mr. Gladstein: Excuse me. Would you care to read the passage from the book, Professor? You may want to look at the preceding paragraph or something.

Trial Examiner Landis: I think, incidentally, as it is time for our usual recess, we might as well take a few minutes.

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Mr. Shoemaker: Shall I go ahead, your Honor?

Trial Examiner Landis: Yes.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

The Witness: May I continue this question that was propounded to me?

Mr. Shoemaker: Q. Surely.

A. This is what Mr. Shoemaker read. My contention was that Earl Browder insisted on a majority of the population.

Q. All right, go ahead.

A. This is what you read:

"Under such circumstances the revolutionary will to power of the workers, their heroism, their self-sacrifice——"

Q. (Interrupting) You say "Mr. Shoemaker read": I think you have got it wrong there, Professor. I don't think I read any such stuff as that.

A. We will get over on this page: "There can be no such first step——" Is that it? [445]

Q. That is only part of what I read, yes; I did read that.

A. "In this revolutionary situation——"

Q. Yes, go ahead.

A. "--the Communist Party, which has won the active support of the majority of the working class, and of the decisive sections of the other exploited classes, wins some of the armed forces to its side and leads the effective majority of the population to the seizure of state power." You stopped there, didn't you?

Q. No. A. All right. We will go on:

"There can be no such first step if there is no

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

revolutionary situation, or if the Communist Party has failed to rally the support of the majority of the population."

Q. I read on.

A. "After this first step of taking state power has been realized, the workers make use of the state power to take possession of the instruments of production."

Q. There I stopped.

A. Yes, but my contention was that they would have a majority of the population.

Q. My contention is just the opposite, and I reiterate: What is the effective majority of the population? Does that mean anything to you?

A. But he states there can be no such first step if there is no revolutionary situation.

Q. No. The sentence above that, Professor?

A. "Win some of the armed forces to its side, and leads the effective majority of the population to the seizure of power. There can be no such first step if there is no revolutionary situation, or if the Communist Party has failed to rally the support of the majority of the population."

Q. All right.

A. That was my contention: that they would have to have a majority of the population before that first step can be taken.

Q. "And leads the effective majority of the population to the seizure of state power." [446]

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Now, you contend one thing and I contend the other. Now, of course we can go on and argue that, and I don't see any purpose, because we have got other things to read and I don't want to take too much of your time. I know you want to get back to the university. So we are going to come to that, and I don't see any necessity of pursuing that any further unless you want to. I am willing to argue it with you, if you want to. A. No.

Q. Considering the reference to the "armed forces to its side" and the "seizure of state power," do you think Mr. Browder had any condition in mind where violence might obtain?

A. Well, you would have a majority there, and you would have a transfer of power.

Q. You mean now an effective majority, or the majority of the population?

A. Well, he stipulates a majority of the population.

Q. You think, then, that the first sentence means nothing, and the whole criterion of the sentence is that there can be no such first step unless the Communist Party has failed to rally the support of the majority of the population? You think that must be a condition precedent, as distinguished from a condition subsequent?

A. Well, I take it as both, an effective majority and also of a majority.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. You think they are both essential and condition precedent? A. They are, yes.

Q. Well, I still differ with you, as I say. Now, I am going to read—you have the book there—did you say you had read "The Problems of Leninism"?

A. I read that quite a while back.

Q. I want to read, in relation to that one thing, something that has just been handed to me. This is by Josef Stalin:

> "But we say: Let the revolutionary proletariat first overthrow the bourgeoisie, break the yoke of capital, break up the bourgeois state apparatus. Then the victorious proletariat will speedily gain the sympathy and support of the majority of the toiling non-proletarian masses by satisfying their wants at the expense of the exploiters." [447]

Does that add anything to my view, do you think?

A. Yes, except that I am not insisting on defending Stalin in any sense of the word.

Q. I am not asking you to defend him, but construe him and answer questions with regard to what he meant when he said certain things.

A. I think it is clear what he insists on there.

Q. Certainly Josef Stalin doesn't contemplate a majority of the people, whatever you may think Mr. Browder contemplates.

A. Not in that statement; he does not contemplate the majority.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. Would you say that statement was in conformity with the views of Marx?

A. No; I would not say it is in conformity with the views of Marx.

Q. You think that might be a distinction from Marx?

A. Unless where you had a complete breakdown of the existing order and a minority might take over.

Q. Perhaps you would care to read what is above that, if you want to. As I say, there are no trick questions. Do you want to read what is above that?

A. No.

Q. Mr. Browder, on pages 165——

Again we have the same proposition that we had yesterday. Right in this connection I want to correct, for purposes of the record at this time, a statement which I made yesterday. I said that I had framed these questions back in Washington. What I meant was that I had taken these excerpts from books and framed the questions after I arrived here.

That doesn't mean anything to you, Professor, but I made that statement and I want the record to show what the fact is; that is all. Mr. Browder, in his book, "What is Communism"?, which I think you have read, states this:

> "All revolutions have been made with weapons which the overthrown rulers had relied on for their protection. [448]

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

"History does not show a single example in which state power was transferred from one class to another by peaceful means, whether in the form of voting or some other method of formal democracy.

"Communists, despite what their enemies say, do not advocate or idealize violence. A violent struggle with the capitalists is by no means our choice or preference. We know only too well the terrible price workers have to pay as a result of the violence employed by the capitalists against them every day. We would be only too delighted if the capitalists would voluntarily scrap the deadly weapons which they use against the population at home, and which they are piling up in unprecedented quantities for a second world war. But we would be more than fools, we would be criminals, if we did not *want* the toilers that capitalists will not peacefully submit to the dictates of history."

Now, "the dictates of history," I take it, is a following through of the so-called Marxian theory. In this article, excerpts from which you have just heard me read, do you think that Mr. Browder contemplates the use of force and violence?

A. According to that statement that would be after the proletarians had managed to secure a majority; and you might have a small minority there

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

using the weapons to keep from surrendering power.

Q. Again I don't agree with you. They don't say anything about obtaining the majority. They say this?

> "We would only be too delighted if the capitalists would voluntarily scrap the deadly weapons which they use against the population at home, and which they are piling up in unprecedented quantities for a second world war. But we would be more than fools, we would be criminals, if we did not warn the toilers that capitalists will not peacefully submit to the dictates of history."

He wasn't talking about any majority of the population or anything else. He was simply warning the toilers of what they could expect and that force and violence was to be used. It seems to me [449] that he clearly expressed that it might come. He didn't say when, he didn't say how, but it was there just the same and it was in his mind when he wrote that, in my judgment. Do you agree with that?

A. Well, what about "dictates of history"?

Q. The "dictates of history" are susceptible to more than one construction. Men, during the course of history, have waited for an opportune time to jump for action, where other men might regard it as an inopportune time. Men have seized power by coups and otherwise. Men haven't waited for the

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

majority as a rule to act because if they did there is a possibility that that majority might never act. That is what I think he means by "the dictates of history." You asked me the question and that is my answer.

A. In the French Revolution would you say that the old regime represented a majority?

Q. The old regime? A. Yes.

Q. No, not necessarily that it represented a majority. I think this: that a small minority, when they thought the time was ripe, took that action. I am not arguing for or against the proposition. I suppose if I had been there I more than likely would have been on the side that did that—I am not saying I wouldn't. But I say that it wasn't the majority of the people who wanted revolution.

A. The French priest Sieyes claimed that nineteen-twentieths of the people wanted the revolution.

Q. That gentleman expressed his views preceding Marx in 1789 at the beginning.

A. At the time of the French Revolution nineteen-twentieths of the people, the Third Estate, wanted it; there was only a mere handful of nobility.

Q. That same gentleman is regarded as expressing the view of Marx afterwards; isn't that correct?

A. Not at all.

Q. He didn't?

A. There is no relationship.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. Did you know there was such an Abbe in France who expressed [450] almost identically the same views as Marx, but was never given credit for the Marxian theory? A. No.

Q. There is such a man and I can give you a book if you want to see it. I am going to go on and read you some more, Professor:

> "If the productive forces and accumulated wealth of society are to be preserved and further developed, the property rights of the capitalists and the institutions by which they are maintained must be abolished, and the exploiting minority and its agents suppressed. Thus, some form of violence is unavoidable. There is no possible choice between violence and nonviolence. The only choice is between the two sides of the class struggle."

Do you think violence and force were contemplated in that excerpt?

A. Well, there again I have to come back to the question of the minority and the majority.

Q. How?

A. That is, you have that small class there as described by Engels. You find the same thing in Lenin, that is, the small group as contrasted with the larger group.

Q. Do you think, then, that when a revolution is going to come we are first going to have a census in

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

this country, or in any other country, to see numerically how many people are in favor of the proposition or against it?

A. Oh, no. It wouldn't be as simple as that.

Q. You express one view with regard to what the majority means and I express another, I take it, entirely. You think that the majority, if there be a revolution it is a majority that always brings it about. I, on the other hands, think it is not a fact that the majority always brings a revolution about; that frequently and generally it is the minority that brings the revolution about.

A. I wouldn't contend it is a majority that always brings it about.

Q. I don't want to put words in your mouth.

A. You had a situation in Germany, in 1918, where conditions had broken down and in [451] Russia in 1917 the same thing occurred.

Q. Broken down in the judgment of some people; that is all, isn't it? Other people may not think they broke down. Other people may take a contrary view on that.

A. How could they have taken, if conditions hadn't broken down, Petrograd without a struggle? They simply declared that all power had been transferred to the soviet.

Q. Kerensky took it without a decided breakdown, didn't he? You wouldn't contend Kerensky was in the majority?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. We have gone back—Kerensky didn't take it; the soviets took it.

Q. The Bolsheviks?

A. No; the soviets.

Q. The Bolsheviks——

A. (Interrupting) They were a minority.

Q. After all, we are dealing with labels and they do not mean very much.

A. They mean quite a bit. There is quite a distinction between the Bolsheviks and the Menshevics and the social revolutionists, and the liberal party—they were all included in the soviets.

Q. If the majority of the people as a whole were in favor of doing anything you would hardly think there would be a necessity for a revolution, would you?

A. Well, there again you have to come over to an effective majority; that is, an organized majority.

Q. You are using the term, an effective majority. It has to be a majority—that is where I differ with you.

A. You wouldn't call it an effective minority.

Q. If the majority of the people in the United States wanted to make changes in this government they could make them without difficulty by use of the ballot, couldn't they?

A. Yes, within certain limits.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. What do you mean by "within certain limits"?

A. That they would have to have a constitutional amendment, perhaps.

Q. I understand that. We all understand that. Now, you say an effective majority. You can conceive of a condition where there might be an effective majority well equipped working underhanded, [452] working underground in their own way where they might, for instance, accomplish something without regard to what the majority of the people in America thought. You can conceive of that?

A. It is a possibility.

Q. That is just the picture we are trying to paint for you. We believe that is possible. We believe that is just what the Communist Party is trying to do. Again, I am going to read to you from "What is Communism?" by Browder:

> "There is plenty of wealth in the country to pay for all of those necessary things. But all this wealth is in the hands of the rich. There is no magic formula by which it can be obtained, except by taking it away from the rich. This can be done by taxation, for which the government has full power. If the government refuses to do this, then there is another way, the way pointed out by Lincoln, who declared that when the people became dissatisfied with their government, they have the in-

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

herent right to change, or overthrow it, and set up a new one which will carry out their will."

Do you think Mr. Browder had in mind anything about force and violence at that time?

A. Yes—there again he is referring to the people as distinguished from a small group.

Q. I will go on and read further:

"We Communists declare, and we have proven it by experience, that only class struggle policies can be victorious for the workers in the day to day battles for immediate needs. We reject the idea that collaboration with the bosses will enable the workers to steal a few crumbs. We reject just as completely the idea that the workers must suffer, their conditions must become intolerable, before they are willing to go along the path of class struggle. History has shown that it is upon the basis of these daily struggles for bread that the revolutionary movement is made strong and prepared for the giant task of overthrowing capitalism."

[453]

Do you think force and violence is contemplated there? A. Not necessarily.

Q. What does "the revolutionary movement" mean? Do you think that means a peaceful revolutionary movement?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Revolution may be a peaceful thing.

Q. Of course, I understand it may be, but do you think Mr. Browder thought that when he said that?

A. I don't know what Mr. Browder thought when he wrote that.

Q. When you overthrow a thing—it says here "the giant task of overthrowing capitalism." It could readily be admitted by you, I think, that that might contemplate force and violence, might it not?

A. Possibly.

Q. Even probable, isn't it?

A. Not unless you had a sufficiently large group there, a majority, to accomplish that revolution.

Q. Let's go ahead and read further. Again Mr. Browder states:

> "It must be emphasized that capitalism will not simply come to an end; it can only be ended by the organized actions of the working class in collaboration with its allies from other sections of the population. The revolution does not simply happen; it must be made. This does not imply that the Communist Party 'makes' the revolution. The socialist revolution is carried out by the great masses of toilers. The Communist Party, as the vanguard of the most conscious toilers, acts as their organizer and guide. It gives the masses political awareness of their problems, a realistic program that will

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

solve these problems; the heightened class consciousness of the workers leads them to follow the Communist Party."

Do you think violence might be contemplated there?

A. I see no reason why it should be contemplated there.

Q. You don't see any reason why it should?

A. No; why it should be contemplated in that statement.

Q. Do you think these words mean anything, or are they just simply [454] thrown in, just in an offside way—"The revolution does not simply happen; it must be made." What does that mean to you? Does it mean anything at all?

A. Well, it doesn't necessarily bring in force and violence.

Q. It doesn't necessarily, but really, aside from whether necessarily it means force and violence, it could mean force and violence, couldn't it?

A. Force and violence is one thing and a revolution is another thing.

Q. Do you think he was talking about a peaceful revolution there when he said: "The revolution does not simply happen; it must be made"?

A. He may very well be talking about a peaceful revolution.

Q. That is your conception of it. You say he may very well—is that your construction of it?

A. I don't know from what you have read me.

Q. I would like to get your construction of it.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Well, I should not want to construe Mr. Browder's writings there.

Q. I am not asking you to approve Mr. Browder's writings. I am asking you to construe those words, and I asked whether you thought that force and violence was contemplated there in the excerpt which I have just read.

A. My answer was "I don't know."

Q. Your answer was "Not necessarily"; and I want to know what you meant by "Not necessarily." Did you mean that a peaceful revolution is contemplated there by Mr. Browder?

A. I don't know. I don't know what Mr. Browder contemplated when he wrote that.

Q. Have you read "The People's Front"?

A. No; I have not.

Q. You haven't read "A Letter to American Workers," have you? A. No.

Q. You haven't read "The Ultimate Aim," have you? A. No.

Q. "The Program of the Communist International," you have not read? A. No.

Q. You have read "Left-Wing Communism: An Infantile Disorder"? [455]

A. No. I put it in that pile that I have not read, or I thought I did.

Q. All right. We will forget it. You haven't read "The Communist Party," by Alex Bittelman, have you? A. No.

Q. We are getting along fine.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. I haven't even heard of Bittelman.

Q. There is such a book. Will you take my word for it? A. Yes.

Q. I think you said you read "Why Communism?" by Olgin? A. Yes.

Q. I want to read you, from pages 75 to 77. If you want, Professor, I will give you this book as I read it.

(The book referred to was passed to the witness.)

By Mr. Shoemaker: Q. (Reading:)

"A time comes when there is demoralization above, a growing revolt below; the morale of the Army is also undermined. The old structure of society is tottering. There are actual insurrections; the Army wavers. Panic seizes the rulers. A general uprising begins. Workers stop work, many of them seize arms by attacking arsenals. Many had armed themselves before as the struggle sharpened. Street fights become frequent. Under the leadership of the Communist Party the workers organize revolutionary committees to be in command of the uprising. There are battles in the principal cities. Barricades are built and defended. The workers' fighting has a decisive influence with the soldiers. Army units begin to join the revolutionary fighters; there is fraternization between the workers and the soldiers, the workers and the Marines. The movement among the

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

soldiers and marines spreads. Capitalism is losing its strongest weapon, the Army. The police as a rule continue fighting, but they are soon silenced and made to flee by the united revolutionary forces of workers and soldiers. The Revolution is victorious. Armed workers and soldiers and marines seize the principal governmental offices, invade the residences of the [456] President and his cabinet members, arrest them, declare the old regime abolished, establish their own power, the power of the workers and farmers."

Do you think that contemplates force and violence?

A. I think that is very interesting. Engels said this stuff was out of date in 1848.

Q. I am still contending it is not. Do you want me to prove it? If so, I will give it to you in time. This is the reason I am asking that question. I don't care what anyone said about it. Did you say that Engels said it was out of date?

A. Yes. I am not citing Olgin—I mean the method of attaining power, that is by barricades and street fighting, that is something that was out of date in 1848.

Q. Do you think it might even obtain here in the United States?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. I don't see that it would particularly accomplish anything; that is, the building of barricades and fighting in streets.

Q. Did you ever think that it might be done, even though you might not think it might be done? In other words, that it might occur even though you think it might not be done?

A. The technic of revolution has changed. Olgin has written a very interesting paragraph there about what is going to happen.

Q. You think then that when Olgin wrote that that he was pointing out what had been done and not anything that could happen at all; is that your idea?

A. Oh, I don't know—he describes revolutions as they were conducted.

Q. As they were conducted?

A. In the French Revolution.

Q. Is that all he did?

A. And he also mentions there that the time comes when this will happen.

Q. He doesn't say anything that I can find in there about a French Revolution, or anything else. I am going back and read some for you from the beginning: [457]

> "The revolutionary overthrow of capitalism and the dictatorship of the Proletariat. The overthrow of the state power, and with it, of the capitalist system, grows out of the everyday

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

struggles of the workers. One is historically inseparable from the other. As the organization of the workers grows, as their troubles become fiercer, while many nonprotelarian elements like farmers, intellectuals, and exploited members of the lower middle class join the revolutionary movement, the final onslaught on the fortress of capitalism draws nearer. These struggles are the reaction of the masses to the misery wrought by the crisis of capitalism. The capitalists try to overcome the crises by putting additional burdens on the shoulders of the masses, but they cannot cure the incurable disease. There comes a time when large sections of the population say that this simply 'cannot go on.' The government seems to be entirely inept to cope with the political and social difficulties. The belief of the population in the wisdom and all-powerfulness of the 'men higher up' is shaken. These men are losing their confidence. The confidence of the masses in their own strength is growing apace. The struggles of the masses meanwhile become broader and deeper. The government tries suppression. It does not succeed in crushing the spirit of revolt. It cannot stem the tide. The previous struggles of the workers count greatly. The clearer the class-consciousness of the workers, the more steeled they are in fighting, the better

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

the revolutionary leadership they have developed in the course of years, the greater the number of friends they have allied with themselves from among the other oppressed classes, the more capable are they to deal the final blow.

"It is not necessary that this final blow, i. e., the revolution, should come in connection with an imperialist war, although this is most likely. Capitalism will seek to prevent a revolution by plunging the country into war. War is to serve not only as a way [458] out of the crisis but as a means to arouse the patriotism of the masses, to increase governmental terror (Martial law,) and to divert public attention from internal affairs. War, under such conditions, for a while retarding the revolutionary movement, may hasten it later when the war sufferings begin to tell on the masses."

Now, from what I have read you, do you think now he was talking about something that was past and belonged to a dead world, or talking about something that could happen today, that likely would be arranged to happen today?

A. Well, I said in the past, that that would be the procedure, these various steps.

Q. Don't you believe, after hearing that, that he was dealing with something that could happen today? A. Could happen today?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. Yes, could happen today. A. When?

Q. Right here in the United States of America.

A. In 1939?

Q. In 1939.

A. I absolutely do not believe that such a thing could happen in the United States in 1939.

Q. Well, do you think that he was dealing with problems of today and trying to define it as of today? A. Oh, I don't know.

Q. You don't know? Suppose you read it yourself and tell me if you think he is dealing with a past matter. Read it again; read it as many times as you want.

A. Well, it starts out by saying, "The time comes."

Q. A time comes, yes. What does that mean? Does that mean the time is gone?

A. It doesn't mean 1939.

Q. Not necessarily; it might mean 1941, '42, '43 or '44. A. Or 1995.

Q. Or 1995, yes; but he wasn't talking of something that had gone by, was he?

A. Well, there may be a possibility of coming to an impasse of that sort.

Q. All right. If it can happen in 1995 it can happen in 1939 or any date thereafter, then, can't it? A. No; I wouldn't agree with you there.

[459]

Q. Do you think that he meant that it could, aside from what you think?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. Well, he says "the time comes," that is, this historical development when this situation is brought about.

Q. You would concede and I will concede, as far as that is concerned, that he wasn't talking of any specific time; but you will have to concede that he was talking of a future time, won't you, instead of a past time?

A. Yes. In the methods that he refers to there, that is what I said was out of date.

Q. I thought you were talking about a time that was past and gone, that a revolution couldn't happen.

A. But as far as it being the distant future, why, that might come about where you would have an impasse and the things would break down.

Q. According to your judgment, Professor, but according to the judgment of others, it might happen soon. Now, you can visualize that even that might be true, can't you, that others might differ with you as to the time when this revolution might take place?

A. Oh, that is quite conceivable.

Mr. Shoemaker: That is all I wanted to know. No further questions, your Honor.

Mr. Gladstein: No questions.

Trial Examiner Landis: Professor Thompson, I just have a few questions I would like to ask you to clear up a few things in my mind.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

By Trial Examiner Landis: Q. Did you say you spoke Russian?

A. Oh, no, no; I don't even read Russian.

Q. By the way, as an expert witness in this case, you are going to receive, or expect to receive, the normal fee that is paid expert witnesses?

A. Well, it is my understanding that I would receive a regular witness fee.

Q. I see. I am not very familiar with the details of the progress [460] of the Russian Revolution between February and October. As you say, in February, if I remember your testimony correctly, due to the breakdown that occurred then, there was a transfer of power to the Soviets; is that right?

A. No; that is not correct. You had your provisional government and also the soviets; that is, you had a dual system of government there.

Q. Yes.

A. But the provisional government was the government that was recognized, that is, in international relations and so on.

Q. Well, this cry for power of the Soviets became a battle cry for what power?

A. Well, that was "All power to the Soviets" instead of sharing it with the provisional government.

Q. Yes; but who made it; whose battle cry was that?

A. I think that was the Bolsheviks.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. The Bolsheviki? A. Yes.

Q. Wasn't there a demand during that period for a constituent assembly?

A. There was a demand and Kerensky delayed it.

Q. Was the demand for a constituent assembly at that time—was that a Bolsheviki demand, or a demand of the social democrats?

A. Well, I think, if I remember correctly, that the Bolsheviks also favored it. I am not sure about that. I am considering it in the light of Lenin's theory before that revolution came about.

Q. There was a delay, as you say, in carrying out of certain programs of the Kerensky group—whether or not they were honest programs is probably immaterial to the discussion at the present time—one of those being a constituent assembly, and the other a land program, and so on. I gathered from your statement that later on the Bolsheviki were against the constituent assembly?

A. Well, after they had taken power, after they had gotten the majority in the Soviets.

Q. That is, after the October revolution. But I was thinking of the period prior to the October revolution.

A. Well, it may very [461] well be before the October revolution, because in July was when pressure was brought to bear against the Soviets, that is, by the military; and from there on they changed

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

their tactics and their slogans.

Q. Well, let me put it this way: Would you say that the system of government by the Soviets was a democratic system of government?

A. Yes, I would say that it is a democratic system of government. That is, you had the soviets of soldiers and of workers, and afterwards the soviets of peasants organized in electing deputies to an assembly. It wasn't a democratic form of government as we have it, but another form of democratic government.

Q. Would you say that the constituent assembly as envisaged by the program was more of a democratic form of government that as we envisage it?

A. At that time?

Q. At that time, the program for the constituents?

A. Yes, I would say that would be more along the American line.

Q. And the Bolsheviki after the July incident, you said, in substance, raised the battle cry of "All power to the Soviets" and rejected the countercry of the demand for a constituent assembly coming from other, perhaps other liberal sources in Russia at that time; is that right?

A. I am not sure of the historical facts, but after July, Lenin pointed out that the Mensheviks and the social revolutionaries have really joined with the reactionaries in favor to a return to some sort

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

of a monarchial government, and Lenin insisted that that would be a step backwards.

Q. But did he want to take the step that would be implied in the calling of a constituent assembly, of seeing whether or not the movement should be made in this direction that by old procedures the constituent assembly involved, or if he wanted to take the step as it came in the cry of "All Power" and so forth?

A. Oh, he would stand by the slogan "All power to the Soviets" [462] and then proceed to enlarge upon the Soviets; you would spread them throughout the country.

Q. But in so far as his actions and preachings went, from July to October, would you say that he refused or dodged the issue of whether or not the Bolsheviki could come into power as a result of the constituent assembly?

A. I don't know. I am really not an expert on Russian history; just from my casual reading of the situation as that has developed. But having gained a majority in the Soviets, I don't think that he would relinquish that power, that is, to call a constituent assembly.

Q. After October?

A. Well, he had a majority before October; you realize that he had a majority then.

Q. And it is very rare that people relinquish power that they got under any circumstances?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. That is quite true.

Q. Throughout the passages that have been read to you, and with which you were familiar, and also in the passages from Marx and Engels that you have quoted, there is a constant reference to "democratic government"; and I think you in your statement refer to democratic government as being a procedure——

A. (Interrupting) A what?

Q. —a procedure whereby it is possible for one class to come into power as against the former ruling class, without, shall we say, bloody revolution?

A. Yes.

Q. And I think you state that Engels and Marx recognize that, or, rather, had certain faith in the operations of democratic government because they saw that that was a means whereby the proletariat could come into power without initiating a program of force and violence?

A. That is correct.

Q. It might be that as a result of their seizure of power by those means, a minority might resist the exercise of the power that had been seized and thereby bring about force and violence; or, in other [463] words, counter revolution would bring about force and violence. A. That is correct.

Q. Do you think that their conceptions of democratic government, as they illustrate it, correspond at all with the procedures of government that go

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

under the name of "democratic government" in this country?

A. Yes, distinctly so. That is, in talking about American democracy and democracy in England, and in his writings in 1895 Engels is referring to the franchise in Germany and admonishing the workingmen to participate in those processes.

Q. Yes, but you are aware, of course, that the procedures involved in American government very frequently frustrate the will of a majority, don't they? A. That may be true.

Q. That is, theoretically it is possible for a minority—if, in order to get the will of the majority, make the will of the majority effective, a constitutional amendment is necessary, that a very small minority can frustrate for a long period of time the will of the majority? A. Yes.

Q. Now, assuming that situation and assuming that the proletarian movement is a majority movement, what would the Marxist theories say takes place if, we will say, Constitutional inhibitions present themselves against a majority exercising the power that they have seized? Would that involve the destruction of the institutions of our government as we know them?

A. I don't know that Marx or Engels ever faced the problem.

Q. Did you find out whether Browder ever faced that problem; do you recall at all?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. It sticks in my mind that where that situation would result, then you might have to use force, that is, because a revolution had taken place.

Q. I think we could see it in this fashion, with an issue that I think has concerned the American public at large over the last 20 years: In 1923 the Supreme Court of the United States, in Adkins [464]against the Children's Hospital, held that an effort on the part of the government of the United States to insist that a minor, a living wage be paid to workers in industry, was beyond the power of the Federal Government. Shortly thereafter, in the Sordello case coming up from Arizona, and a series of cases coming up from other sources, followed dramatically by a case in 1934, the Supreme Court of the United States said that the Constitution prevented a state government from achieving that same end, despite what the will of the majority of the electorate of that state might be. In other words, the result of those two decisions put together—and getting away from constitutional phraseology for a moment—was to the effect that under our system, organized government had no power to provide that there should be a floor below which industry could not let wages sink. Suppose you have those inhibitions, those obstructions against the realization of a majority will at present, under our governmental system, what would be the Marxist's attitude with reference to those?

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

A. I don't know. That is really a hypothetical question.

Q. It is a very real question.

A. Yes, it is a real question.

Q. A very real question.

A. I think in actual practice you may have a lag there, but eventually you will find that the judiciary comes up with the other branches of the government. There is a possibility, of course, of having progress stymied in that fashion.

Q. Well, if that lag becomes too serious, though, the Marxist would hardly wait for that lag, would he? He won't submit restrictions upon the will of the majority of that nature?

A. Well, if you come to a point where you had a real effective majority as against a mere handful or a small minority—but there he would probably consider that conditions were arriving at a point where you would arrive at a breakdown. That is, these things are [465] contradictions.

Q. That is, it might be true that there are present in our governmental procedures restrictions upon the power of the majority to realize its will that would be set aside by the Marxist theory. I wonder about that. I mean, as I listen to the Marxist democratic procedures, the will of the majority, and all that kind of—and yet it is perfectly obvious, as one reviews the procedures of our government, that those procedures are set up with the express

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

purpose at times of preventing a realization of the will of the majority; isn't that true?

A. Yes, that is true; you may have that; and if you look back in history, it has taken different courses. Undoubtedly that was true in France in the old regime in 1789, with the result that you had violence; and a similar situation presented itself in Sweden, and the change was made with no violence whatever, that is, the King compromising and afterwards in 1866 the old states were just so outmoded that they submitted without any opposition.

Q. Well, does one have to go back that far? After all, the Civil War is illustrative, isn't it, of that very thing being present in our native——

A. (Interrupting) Oh, yes.

Q. An issue there was the power of the Federal Government to deal with slavery in the territory, the power which the Supreme Court of the United States said under the Constitution was denied to the Federal Government.

A. And you will find in the writings of Calhoun that expresses it, that we have a minority, and that is dominated by a majority in another section of the country, and that constituted the basis.

Q. My point there is this: I wonder, when there is reference again and again to the use of the ballot, democratic procedures, etc., in some of this writing that has been produced, if reference is to American procedures that we know, which may or may not

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

be the [466] same thing as "democratic procedures" that they might practice, for example.

A. You mean the reference by Marx and Engels, and other writers, to the democratic procedure?

Q. Yes.

A. Well, in Engels, he recognized that procedure which is quite similar, as part of the strategy of the workers' party. It would give them a chance to run candidates for office; it would give them a chance to advertise their program; it would give them a chance to speak from the tribune within Parliament and also outside of Parliament, and that really would be an effective weapon for their workers to use; and by the very nature of Marxist theory, that is, that the proletarians will increase—that is the Marxian doctrine that you will have a larger and larger group of proletarians—and so, if they are not the majority now they will be the majority a few years from now, or perhaps 50 years from now; and so he admonishes his followers to stick to the democratic process.

Q. I wonder as to whether or not that is exactly the same kind of process as in some of the terms used in the Communist writing, the theory of the Constitution, which is in part to protect communities as a whole against majorities; isn't that true? A. Yes.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. And I wonder whether or not there is not a casual flurring from the word "democratic," "will of majority," "democratic procedure." The use of that term implies American institutions. I wonder if the implication is quite correct.

A. Well, there would be a difference there. I couldn't conceive of Marx, for instance, accepting the Hamiltonian principle that you can substitute justice for a majority. That is abstract justice.

Q. And yet, that is it, when you are measuring it in the theory of constitutionalism?

A. That is your constitutional government.

Q. One other point, Professor Thompson: I haven't yet had an opportunity to go through many of these exhibits which the Government has introduced, but you had reference there to the split [467] between Lenin and the Social Democrats as represented by Kautsky and others? A. Yes.

Q. Could you briefly sum up what, in your opinion, caused the split, where the difference lay between those two groups?

A. Well, that is rather difficult. You had a quarrel between theorists, for one thing, but——

Q. (Interrupting) Yes; but I would be interested in your description of what you conceive to be the diverging point of those two theories.

A. —but Lenin was accusing Kautsky of backing German Imperialism and of being an opportunist, that is, that he wasn't a Marxist in the revolutionary sense.

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

Q. Backing German Imperialism?

A. That is, backing the German government and the Imperial government, and any politics that it launched out on, why, the social democrats were playing in with the others.

Q. What was the date of that split? I mean, what date are you talking of with reference to the backing of German Imperialism? Is it the Brest-Litovsk Treaty, or prior to that?

A. Oh, no; long before that.

Q. Long before that?

A. Long before that. Of course, there Lenin may have been unfair in his criticism of Kautsky. I think Kautsky's economic doctrine is an excellent statement of the nature of Marxian economics.

Q. Would one point of difference between Lenin and Kautsky rest upon the fact that Kautsky believed that it was possible to get away from the class struggle? That is, to use the Marxian terminology, that the bourgeois were stressing that there were standards whereby this thing could be resolved, and that Lenin took the position that there is no compromise, there can be no compromise?

A. Well, Kautsky certainly stressed the class struggle, that is, he wrote a book on the class struggle. [468]

Q. Yes, but did he recognize that there was a possibility of compromise present between the bourgeois and the proletariat, where Lenin, to use a

(Testimony of William Schneiderman.)

(Defendant's Exhibit R—continued)

phrase I picked up the other day, said it is like "fighting with a Polack; you can give no quarter"?

A. No. It seems to me it would be more a question of Lenin accusing him of preaching one thing and practicing another. That is, he was preaching the class struggle and at the same time playing in with the Social Democrats of Germany.

Q. He was preaching the class struggle and believed in the possibility of compromise, believed that the class struggle was not something that had to be and could be solved only by revolution; believed that if it did exist it could be solved by compromise, cooperation, etc.?

A. Well, there may be a possibility that could be read into Kautsky.

Trial Examiner Landis: That is all I have. Have you further questions of the witness?

Mr. Gladstein: No questions.

Trial Examiner Landis: I would suggest that, it being seven minutes to twelve, we resume at one o'clock with the next witness.

(Witness excused)

(Whereupon, at 11:54, a recess was taken until 1:00 o'clock p. m.)

[Endorsed]: Deft's Ex. R. Filed Dec. 12, 1939.

[469]

(Testimony of William Schneiderman.)

Mr. Andersen: Have you any further excerpts or exhibits there, Mr. Schneiderman, at this time?

A. No.

Q. I show you this pamphlet entitled, "The Constitution of the Young Communist League of the U. S. A." You are familiar with that document, are you not? A. Yes, I am.

Mr. Andersen: I will offer this pamphlet in evidence as Defendant's Exhibit "S."

(Document marked "Defendant's Exhibit S.")

Mr. Andersen: I have a few further questions:

Q. I assume that you have been studying the subject of Marxism and Leninism for quite some few years; is that correct? A. Yes, I have. [220]

Q. And in your capacity as secretary of the Communist Party in California,—District 13, I believe it has been referred to as,—did you find it necessary in your work to deliver lectures and talks on the subject of Marxism and Leninism and, in general, the entire subject of the Communist Party?

A. Yes, I did

Q. You, of course, consider yourself an expert in that particular field? A. Yes, sir.

Q. I assume that you have not only read and studied all of the exhibits introduced in evidence, in your behalf, as well as many other hundreds of books written on the general subject? A. Yes.

Q. Now, with reference to these bookshops to which reference was made by Mr. Humphreys and

(Testimony of William Schneiderman.)

by the former Captain Hynes, are those bookshops under your control at all?

A. No; they are not.

Q. So far as you know, are they under the control of the Communist Party?

A. No. As I understand, the business arrangement with these bookshops is that they are agents of either the International Publishers or the Workers Library Publishers.

Q. Both of which are corporations?

A. Yes.

Q. In so far as you know, does the Communist Party of New York or any other place exercise any authority or control over them?

A. Not that I know of.

Q. You, of course, are familiar with both of those corporations, aren't you? A. Yes.

Q. You buy books there occasionally?

A. Yes.

Q. Do you know if they publish other works besides the Communist treatises and theses?

A. Yes; they publish general books on politics and political science and history. Many of them are by noncommunist authors, and they also publish documents for many different types of organizations, so far as I know.

Q. In other words, so far as you know, it is not a Communist organization; not controlled by the Communist Party or any branch of it?

A. No. [221]

(Testimony of William Schneiderman.)

Q. Now, with respect to the Communist International and the International Communist Party of the United States, what is the extent and the nature of that affiliation?

A. I believe that that relationship was described by myself in my statement and also in the constitution of the Communist Party. We are affiliated with the Communist International, as are the Communist parties of many other countries in different parts of the world. However, at the time of our affiliation, we were not as yet, at that time, a unified Communist party; in fact, we did not even have the name "Communist Party"; we used the name, "Young Workers Party." We were a merger of the many different Communist units, out of which had not yet come a unified program; and, in those early formative years, the Workers Party, when it affiliated with the Communist International—it was as a fraternal organization, with the express proviso that it did not come under the statutes or the conditions for admission which were formulated by the Communist International in 1920, prior to the formation of the Workers Party. That status has never been changed; neither the statutes nor the program nor the conditions for affiliation have ever been approved by any official party body. The reason for that is: although it might have been important in 1919 or 1920 to these groups of parties which were asking for admission to the Communist International, the real question of status and the

(Testimony of William Schneiderman.)

question of admission became a purely question once the Communist parties were organized and once the Communist International was organized. That is the reason why our status was never considered by any party convention; and that is why we affiliated under our own status, operating under the constitution of the parties and under similar procedure which had existed in the Party for many years before our constitution was adopted. The constitution specifically states that the supreme authority in our party is the national convention of the party; and [222] any decision or resolution that might have been adopted or may be adopted by international congress of the Communist International is not considered by our party or its members unless it is specifically acted upon or approved at an official party congress or by the national committee of the parties between conventions. That is why we insist that the policies and the decisions of our party are made entirely by our party and its membership through the means set up by its own constitution.

Q. With respect to Mr. Hynes, the police officer, who testified, did you ever personally know him?

A. Yes, I did.

Q. You knew him in Los Angeles, did you?

A. Yes, I did.

Q. What was the nature of the acquaintance?

A. I was present frequently at either classes or study groups or open forums or mass meetings, to

(Testimony of William Schneiderman.)

which Mr. Hynes and other members of the police department would enter without any seeming reason, and break up the meeting or order the people to leave or forcibly eject them from the hall or prevent them from entering the hall.

Q. How do you mean he "would break up the meetings"?

A. He would order everyone out of the hall; and those who refused to leave, believing that they had the right to hold those meetings, would either be arrested or forcibly ejected.

Q. On how many occasions do you recall having seen Mr. Hynes at Communist meetings?

A. Well, at least a dozen that I distinctly recall. This was such a general practice in those days that I am sure it happened on many more occasions when I was directly present.

Q. Did you ever talk to him?

A. Yes; I recall, on several occasions, speaking to him during such incidents.

Q. Did he ever arrest you?

A. No; he did not.

Q. Never, at any time? A. No.

Q. I direct your attention to Plaintiff's Exhibit No. 6 in [223] evidence, "Programme of the Communist International," published in 1928, according to its printmark. Did you ever read that particular volume—I do not mean that particular volume, but I mean any of the issues of that volume?

(Testimony of William Schneiderman.)

A. This particular programme is not too well-identified, because the programme was changed from congress to congress. I assume this was the programme of the Communist International which was published by the Sixth Congress in 1928.

Q. Did you attend that particular congress?

A. Yes. I have read it and I am familiar with the programme adopted at the Sixth World Congress. It does not state whether this is the programme adopted or amended at the Sixth World Congress.

Q. This was printed after you became a citizen. With respect to Plaintiff's Exhibit No. 16 in evidence, "A B C of Communism," do you happen to be familiar with that volume?

A. Yes, I believe I have read it.

Q. With that work there?

A. Yes; I have read either extracts from it or all of it, many years ago. This particular volume is a work which was withdrawn from use in any Communist party study room or classes.

Q. Do you know when it was withdrawn?

A. I do not recall the exact year; but it was due to the fact that there were many conclusions drawn in here, which were not accepted by the Communist Party or the parties of the various countries or the Communist International; the authors of the book were subsequently expelled from the Communist Party.

(Testimony of William Schneiderman.)

Q. Does that volume today, or did it then, purport to expound the proper theory of Marxism and Leninism?

A. No; it was already under criticism at that time.

Q. I show you Plaintiff's Exhibit No. 17, and ask you if you are familiar with that volume.

A. I have no doubt that I have read [224] it, although I must have been 15 or 16 years old when I read it, and I would not recall everything in it.

Q. But could you tell if it is an official publication of the Communist Party?

A. No; it is not.

Q. I show you Plaintiff's Exhibit No. 18, and ask you if that is an official publication of the Communist Party, or one that is circulated by the Communist Party.

A. This was published by the Workers Library Publishers. It was bought by many Communists, and it enjoyed a wide circulation, as I understand it. It was sold and discussed during a period of about a year or a year and a half when I was not even in the country, so I could not give you any more details about it.

Q. Do you know if it was published by the Communist Party, or sold by the Communist Party?

A. No; it was not.

Q. Now, referring to Exhibit No. 26 in evidence, "Statutes, Theses and Conditions of Admission to

(Testimony of William Schneiderman.)

the Communist International," which was put in evidence during the testimony of Mr. Hynes, do you know if that was ever published by the Communist Party of the United States of America, or distributed by them?

A. I have no recollection of this particular edition. There is nothing to identify where or how it was published. I do not know of any work of this kind being published by the Party.

Q. Did you ever see this being sold, for instance, in any of the so-called bookshops to which Captain Hynes made reference?

A. Not that particular edition. I have no doubt that possibly a pamphlet called, "The Statutes and Resolutions of the Communist International" were sold there; but I do not believe that this was ever printed in the country; it looks to me like an English edition, printed in England.

Q. I show you Government's Exhibit No. 27 in evidence, which purports to be a "Program and Constitution of the Workers Party of [225] America." Have you any knowledge, any opinion, as to whether or not that is what it purports to be, namely, a constitution of one of the predecessors of the Communist Party, adopted in 1921?

A. This program and constitution, with which I am not personally familiar, was probably one of the drafts that were presented to a convention of the Communist Party; but, as I have already stated, there was no written program or written

(Testimony of William Schneiderman.)

constitution of the party prior to 1938; and anything that purports to be a program or constitution was probably one of the drafts which was under discussion during those early years, and it is possible that this was one of those drafts. It contained general theoretical conclusions and interpretations of the Marxism theory, plus what purports to be a constitution of the Workers Party of America. But, according to Mr. Browder, this was a draft which was never finally approved by the Party.

Q. And such was never an official document of the Communist Party or any of its predecessors in interest?

Mr. Hennessy: I object to that as leading and suggestive.

The Court: What is that exhibit?

Mr. Andersen: That is Exhibit 27.

The Court: Q. What were the official documents of the Communist Party before this constitution, if you know?

A. There were resolutions adopted at certain conventions, which were sent out to party subdivisions. I do not recall in just what form they were published.

Q. Are you prepared to say this last exhibit was not sent out?

A. I am not prepared to say it was or it was not. As I said, I am not personally familiar with that particular document; but I assume that is one of the drafts that was presented to a convention.

(Testimony of William Schneiderman.)

Mr. Andersen: Q. Put it this way, Mr. Schneiderman: Over how long a period of time was an effort being made by the [226] Communist Party and its predecessors in interest to adopt a formal constitution?

A. We considered the inception of the Party somewhere back in 1919, although, at that time, it was merely a coming together of various groups that called themselves "Communists." The Workers Party, itself, was formed in 1921 or 1922—the end of 1921, I believe; during the first 10 years of its existence, there was no officially adopted program or constitution. From about 1930 or 1931 on, the period during which I began to attend regularly the conventions of the Communist Party, there were various draft programs, and sometimes constitutions, presented to the convention; those were referred for further discussion and study to the membership; and the final adoption of the constitution and program did not take place until 1938.

Q. At any of those conventions that you attended was there any reference made on the floor of the convention, or from the chair of the convention, that a constitution of the Communist Party was presently in existence?

A. No; as a matter of fact, the only references to a constitution that were made there was the fact that the party was not operating under written constitution.

(Testimony of William Schneiderman.)

Q. In other words, at that time and during all the conventions that you attended, they always proceeded upon the theory that there was no written constitution whatsoever? A. Yes, sir.

Q. And that efforts were being made, from the time you first began to attend those conventions, to finally effect the adoption of such a written constitution? A. Yes, sir.

Q. That is correct? A. Yes, sir.

Mr. Andersen: I think, may it please your Honor, we are practically finished with the submission of our case; and might I suggest that we adjourn until tomorrow morning? There may be some further matters I would like to put in evidence.

The Court: Very well.

(An adjournment was here taken until Wednesday, December 13, 1939, at 10 o'clock a. m.) [227]

Wednesday, December 13, 1939

WILLIAM SCHNEIDERMAN,

recalled.

Mr. Andersen: On behalf of the defendant, I desire to introduce in evidence several quotations from Marx, "Capitalist Expropriation," which I desire to have the privilege of withdrawing in order that I may make a copy and supply Mr. Hennessy a copy.

(Excerpts marked "Defendant's Exhibit T.")

(Testimony of William Schneiderman.)

(DEFENDANT'S EXHIBIT "T")

MARX,

CAPITAL, VOL. I

Pp. 785, 6, 7

Capitalist Expropriation

"In themselves, money and commodities are no more capital than are the means of production and of subsistence. They want transforming into capital. But this transformation itself can only take place under certain circumstances that centre in this, viz., that two very different kinds of commodity-possessors must come face to face and into contact; on the one hand, the owners of money, means of production, means of subsistence, who are eager to increase the sum of values they possess, by buying other people's labor-power; on the other hand, free laborers, the sellers of their own labor-power, and therefore the sellers of labor. Free laborers, in the double sense that neither they themselves form part and parcel of the means of production, as in the case of slaves, bondsmen, etc., nor do the means of production belong to them, as in the case of peasant-proprietors; they are, therefore, free from, unencumbered by, any means of production of their own. With this polarization of the market for commodities, the fundamental conditions of capitalist production are given. The capitalist system presupposes the complete separation of the laborers from all property in the means by which they can realize

(Testimony of William Schneiderman.)

(Defendant's Exhibit T—continued.)

their labor. As soon as capitalist production is once on its own legs, it not only maintains this separation, but reproduces it on a continually extending scale. The process, therefore, that clears the way for the capitalist system, can be none other than the process which takes away from the laborer the possession of his means of production; a process that transforms, on the one hand, the social means of subsistence and of production into capital, on the other, the immediate producers into wage-laborers. The so-called primitive accumulation, therefore, is nothing else than the historical process of divorcing the producer from the means of production. It appears as primitive, because it forms the pre-historic stage of capital and of the mode of production corresponding with it.

"The economic structure of capitalistic society has grown out of the economic structure of feudal society. The dissolution of the latter set free the elements of the former.

"The immediate producer, the laborer, could only dispose of his own person after he had ceased to be attached to the soil and ceased to be the slave, serf, or bondsman of another. To become a free seller of labor-power, who carries his commodity wherever he finds a market, he must further have escaped from the regime of the guilds, their rules for apprentices and journeymen, and the impediments of their labor regulations. Hence, the historical move-

(Testimony of William Schneiderman.)

(Defendant's Exhibit T—continued.)

ment which changes the producers into wage-workers, appears, on the one hand as their emancipation from serfdom and from the fetters of the guilds, and this side alone exists for our bourgeois historians. But, on the other hand, these new freedmen became sellers of themselves only after they had been robbed of all their own means of production, and of all the guarantees of existence afforded by the old feudal arrangements. And the history of this, their expropriation, is written in the annals of mankind in letters of blood and fire."

* * * * * * *

"The starting point of the development that gave rise to the wage-laborer as well as to the capitalist, was the servitude of the laborer. The advance consisted in a change of form of this servitude, in the transformation of feudal exploitation into capitalist exploitation. To understand its march, we need not go back very far. Although we come across the first beginnings of capitalist production as early as the 14th or 15th century, sporadically, in certain towns of the Mediterranean, the capitalistic era dates from the 16th century. Wherever it appears, the abolition of serfdom has been long effected, and the highest development of the middle ages, the sovereign towns, has been long on the wane.

"In making history of primitive accumulation, all revolutions are epoch-making that act as levers for the capitalist class in course of formation; but.

(Testimony of William Schneiderman.)

(Defendant's Exhibit T—continued.)

above all, those moments when great masses of men are suddenly and forcibly torn from their means of subsistence, and hurled as free and 'unattached' proletarians on the labor market. The expropriation of the agricultural producer, of the peasant, from the soil, is the basis of the whole process. The history of this expropriation, in different countries, assumes different aspects, and runs thru its various phases in different orders of succession, and at different periods. In England alone, which we take as our example, has it the classic form."

Ibid., P. 795-6

"Communal property—always distinct from the State property just dealt with—was an old Teutonic institution which lived on under cover of feudalism. We have seen how the forcible usurpation of this, generally accompanied by the turning of arable into pasture land, begins at the end of the 15th and extends into the 16th century. But, at that time, the process was carried on by means of individual acts of violence against which legislation, for a hundred and fifty years, fought in vain. The advance made by the 18th century shows itself in this, that the law itself becomes now the instrument of the theft of the people's land, although the large farmers make use of their little independent methods as well. The parliamentary form of the robbery is that of Acts for enclosures of Commons, in other

(Testimony of William Schneiderman.)

(Defendant's Exhibit T—continued.)

words, decrees by which the landlords, grant themselves the people's land as private property, decrees of expropriation of the people * * *

"Whilst the place of the independent yeoman was taken by tenants at will, small farmers on yearly leases, a servile rabble dependent on the pleasure of the landlords, the systematic robbery of the Communal lands helped especially, next to the theft of the State domains, to swell those large farms, that were called in the 18th century capital farms or merchant farms, and to 'set free' the agricultural populations as proletarians for manufacturing industry."

Ibid., P. 799, 800, 1, 2

"The stoical peace of mind with which the political economist regards the most shameless violation of the 'sacred rights of property' and the grossest acts of violence to persons. as soon as they are necessary to lay the foundations of the capitalistic mode of production, is shown by Sir F. M. Eden, philanthropist and tory, to boot. The whole series of thefts, outrages, and popular misery, that accompanied the forcible expropriation of the people, from the last third of the 15th to the end of the 18th century, lead him merely to the comfortable conclusion: 'The due proportion between arable land and pasture had to be established. During the

(Testimony of William Schneiderman.)

(Defendant's Exhibit T—continued.)

whole of the 14th and the greater part of the 15th century, there was one acre of pasture to 2, 3 and even 4 of arable land. About the middle of the 16th century the proportion was changed to 2 acres of pasture to 2, later on, of 2 acres of pasture to one of arable, until at last the just proportion of 3 acres of pasture to one of arable land was attained.'

"In the 19th century, the very memory of the connection between the agricultural laborer and the communal property had, of course, vanished. To say nothing of more recent times, have the agricultural population received a farthing of compensation for the 3,511,770 acres of common land which between 1801 and 1831 were stolen from them and by parliamentary devices presented to the landlords by the landlords?

"The last process of wholesale expropriation of the agricultural population from the soil is, finally, the so-called clearing of estates, i.e., the sweeping men off them. All the English methods hitherto considered culminated in 'clearing'. As we saw in the picture of modern conditions given in a former chapter, where there are no more independent peasants to get rid of, the 'clearing' of cottages begins; so that the agricultural laborers do not find on the soil cultivated by them even the spot necessary for their own housing. But what 'clearing of estates' really and properly signified, we learn only in the promised land of modern romance, the Highlands

(Testimony of William Schneiderman.)

(Defendant's Exhibit T—continued.)

of Scotland. There the process is distinguished by its systematic character, by the magnitude of the scale on which it is carried out at one blow (in Ireland landlords have gone to the length of sweeping away several villages at once; in Scotland areas as large as German principalities are dealt with), finally by the peculiar form of property, under which the embezzled lands were held.

"The Highland Celts were organized in clans, each of which was the owner of the land on which it was settled. The representative of the clan, its chief or 'great man', was only the titular owner of this property, just as the Queen of England is the titular owner of all the national soil. When the English government succeeded in suppressing the intestine wars of these 'great men', and their constant incursions into the Lowland plains, the chiefs of the clans by no means gave up their time-honored trade as robbers; they only changed its form. On their own authority they transformed their nominal right into a right of private property, and as this brought them into collision with their clansmen, resolved to drive them out by open force. 'A king of England might as well claim to drive his subjects into the sea,' says Professor Newman. This revolution which began in Scotland after the last rising of the followers of the Pretender, can be followed thru its first phases in the writings of Sir James Steuart and James Anderson. In the 18th

(Testimony of William Schneiderman.)

(Defendant's Exhibit T—continued.)

century the hunted-out Gaels were forbidden to emigrate from the country, with a view to driving them by force to Glasgow and other manufacturing towns. As an example of the method obtaining in the 19th century, the 'clearing' made by the Duchess of Sutherland will suffice here. This person, well instructed in economy, resolved, on entering upon her government, to effect a radical cure, and to turn the whole country, whose population had already been, by earlier processes of the like kind, reduced to 15,000 into a sheep walk. From 1814 to 1820 these 15,000 inhabitants, about 3060 families, were systematically hunted and rooted out. All their villages were destroyed and burnt, all their fields turned into pasturage. British soldiers enforced this eviction, and came to blows with the inhabitants. One old woman was burnt to death in the flames of the hut, which she refused to leave. Thus this fine lady appropriated 794,000 acres of land that had from time immemorial belonged to the clan."

Ibid., P. 805, 6

"The spoliation of the church's property, the fraudulent alienation of the State domains, the robbery of the common lands, the usurpation of feudal and clan property, and its transformation into modern private property under circumstances of reck-

(Testimony of William Schneiderman.)

(Defendant's Exhibit T—continued.)

less terrorism, were just so many idyllic methods of primitive accumulation. They conquered the field for capitalistic agriculture, made the soil part and parcel of capital, and created for the town industries the necessary supply of a 'free' and outlawed proletariat."

* * * * * * *

"The proletariat created by the breaking up of the bands of feudal retainers and by the forcible expropriation of the people from the soil, this 'free' proletariat could not possibly be absorbed by the nascent manufactures as fast as it was thrown upon the world. On the other hand, these men, suddenly dragged from their wanted mode of life, could not as suddenly adapt themselves to the discipline of their new condition. They were turned en masse into beggars, robbers, vagabonds, partly from inclination, in most cases from stress of circumstances. Hence at the end of the 15th and during the whole of the 16th century, throughout Western Europe a bloody legislation against vagabonds. The fathers of the present working-class were chastised for their enforced transformation into vagabonds and paupers. Legislation treated them as 'voluntary' criminals, and assumed that it depended on their own goodwill to go on working under the old conditions that no longer existed."

(Testimony of William Schneiderman.)
(Defendant's Exhibit T—continued.)

Ibid., P. 808-9

"Thus were the agricultural people, first forcibly expropriated from the soil, driven from their homes, turned into vagabonds, and then whipped, branded, tortured by laws grotesquely terrible, into the discipline necessary for the wage system."

[Endorsed]: Deft's Ex. T. Filed Dec. 12, 1939.

Mr. Andersen:

I desire also to introduce some excerpts from the writings of Jefferson.

(Excerpts marked "Defendant's Exhibit U.")

DEFENDANT'S EXHIBIT "U"

JEFFERSONIAN PRINCIPLES & HAMILTONIAN PRINCIPLES

(Selected and edited by James Truslow Adams—P. 94)

Letter to James Madison, Jan. 30, 1787

Rebellion

"* * * I hold it that a little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical. Unsuccessful rebellions indeed generally establish the encroachments on the right of the people which have produced them. An observation of this truth should lead our honest Republican governors so mild in

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[Note: All italics in this exhibit are by the author.]

(Testimony of William Schneiderman.)

(Defendant's Exhibit "U"—continued.)

their punishment of rebellions, if not to discourage them too much. It is a medicine necessary for the further health of government."

Letter to Samuel Kercheval, July 12, 1816, P. 27-28, Ibid

"Some men look at constitutions with sanctimonious reverence and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present; and forty years of experience in government is worth a century of book-reading; and this they would say themselves, were they to rise from the dead. I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand and hand with the progress of the human mind. If that becomes more developed, more enlightened, if any discoveries are made, any truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require

(Testimony of William Schneiderman.)

(Defendant's Exhibit "U"—continued.)

a man to wear still the coat which fitted him when a boy, as civilized society to remain as under the regimen of their barbarous ancestors * * *"

Letter to Wm. S. Smith, Nov. 13, 1787, P. 93, Ibid

"* * * GOD forbid we should ever be 20 years without such a rebellion. The people cannot be all, and always, well informed. The part which is wrong will be discontented in proportion to the importance of the facts they misconceive. If they remain quiet under such misconceptions, it is a lethargy, the forerunner of death to the public liberty. We have had thirteen states independent eleven years. There has been one rebellion. That comes to one rebellion in a century and a half for each state. What country before ever existed a century and a half without a rebellion? And what country can preserve its liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance. Let them take arms. The remedy is to set them right as to facts, pardon and pacify them. What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure."

(Testimony of William Schneiderman.)
(Defendant's Exhibit "U"—continued.)

DEMOCRACY,

By Thomas Jefferson

(Selected and arranged by Saul K. Padoven)

Letter to Short, 1793—P. 32

The French Revolution and Terror

"In the struggle which was necessary, many guilty persons fell without the forms of trial, and with them some innocent. These I deplore as much as any body, and would deplore them as I should have done had they fallen in battle. It was necessary to use the arm of the people, a machine not quite so blind as balls and bombs, but blind to a certain degree. A few of our cordial friends met at their hands the fate of enemies but then their truth will rescue and embalm their memories while their posterity will be enjoying that very liberty for which they would never have hesitated to offer up their lives. The liberty of the whole earth was depending on the issue of the contest, and was half such a prize won with so little innocent blood? My own affections have been deeply wounded by some of the martyrs to this cause, but rather than it should have failed I would have seen half the earth desolated; were there but an Adam and Eve left in every country, and left free, it would be better than it is now."

(Testimony of William Schneiderman.)

(Defendant's Exhibit "U"—continued.)

Letter to J. Cartwright, 1824, P. 104—Ibid

"Can they (our constitutional laws) been made unchangeable? Can one generation bind another, and all others, in succession forever? I think not. The Creator has made the earth for the living, not the dead. Rights and powers can only belong to persons, not to things, not to mere matter, unendowed with will. The dead are not even things * * * To what then are attached the rights and powers they held while in the form of men? A generation may bind itself as long as its majority is in place, holds all the rights and powers their predecessors once held, and may change their laws and institutions to suit themselves. Nothing then is unchangeable but the inherent and unalienable rights of men."

Letter to J. Cartwright, 1824, P. 51-52, Ibid

"Hume, the great apostle of toryism, says * * * 'it is belied by all history and experience that the people are the origin of all just power.' And where else will this degenerate son of science, this traitor to his fellow man, find the origin of *just* powers, if not in the majority of society? Will it be in the minority? Or in the individual of that minority?

"Our revolution commenced on more favorable ground. It presented us an album on which we were free to write what we pleased. We had no occasion to search into musty records, to hunt up royal

(Testimony of William Schneiderman.)

(Defendant's Exhibit "U"—continued.)

parchments, to investigate the laws and institutions of a semi-barbarous ancestry * * * We had never been permitted to exercise self-government. When forced to assume it, we were novices in its science * * * We established, however, some, although not all its important principles. The constitutions of most of our states assert that all power is inherent in the people, that they may exercise it by themselves in all cases to which they think themselves competent * * *; that they are entitled to freedom of person, freedom of religion, freedom of property, freedom of press."

Letter to Governor Plumer, 1816, P. 26, Ibid.

"The idea that institutions established for the use of the nation cannot be touched nor modified, even to make them answer their end, because of rights gratuitously supposed in those employed to manage them in trust for the people, may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against the nation itself. Yet our lawyers and priests generally inculcate this doctrine, and suppose that preceding generations held the earth more freely than we do; had a right to impose laws on us, unalterable by ourselves, and that we, in like manner can make laws and impose burthens on future generations, which they will have no right to alter; in fine, that the earth belongs to the dead and not the living."

(Testimony of William Schneiderman.)

(Defendant's Exhibit "U"—continued.)

Letter to T. Earle, 1823, P. 26, Ibid

"That our Creator made the earth for the use of the living and not of the dead; that those who exist not can have no use nor right in it, nor authority or power over it; that one generation of men cannot foreclose or burthen its use to another, which comes to it in its own right and by the same divine beneficence; that a preceding generation cannot bind a succeeding one by its laws or contracts; these deriving their obligation from the will of the existing majority, and that majority be removed by death, another comes in its place with a will equally free to make its own laws and contracts; these are axioms so self-evident that no explanation can make them plainer."

[Endorsed]: Defendant's Exhibit "U". Filed Dec. 13, 1939.

That is all of the direct examination.

Cross Examination

Mr. Hennessy: Q. Mr. Schneiderman, I understand from your testimony that until 1938 the Communist Party of the United States of America never had a written constitution?

A. That is right.

Q. Did the Workers Party of America have a written constitution?

A. It had drafts of constitutions which were never finally adopted by the Party.

(Testimony of William Schneiderman.)

Q. I show you Government's Exhibit No. 27, purporting to be a "Program and Constitution of the Workers Party of America," adopted at the National Convention in New York City, December 24, 25, 26, 27, 1921; and amended at the National Convention, Chicago, Illinois, December 30 and 31, 1923, and January 1, 1924, published by the literature department of the Workers Party of America, Chicago, Illinois. Why did the literature department of the Workers Party of America publish this program and constitution of the Workers Party of America, stating it was adopted, on this pamphlet, if no constitution and program had been adopted.

Mr. Andersen: May I at this time renew the motions heretofore made, which were reserved to the defendant, namely, to exclude all of these documents in evidence on the ground of insufficient [470] foundation having been laid; and the other grounds heretofore urged as objections to the introduction of these books in evidence. That objection goes from Exhibit 6 to and including 19, and from Exhibit 26 to 29, inclusive, all of those being introduced by the Government.

The Court: For the purpose of the record, in what respect has not the foundation been laid?

Mr. Andersen: Taking Exhibit 27 that has just been taken from the clerk by Mr. Hennessy, that exhibit was merely introduced in evidence on the statement of Mr. Hynes of the police department of Los Angeles to the effect that he had taken this

(Testimony of William Schneiderman.)

particular document in raids on certain quarters,—that is, certain headquarters of the Communist Party. He testified that he was not an expert on the subject of Communism, and the only use to which he put all of these documents was to go through them, and, wherever he saw passages relating to the use of force and violence, he would underline them——

Mr. Hennessy: Of course, that is not his testimony.

Mr. Andersen: I think I am substantially stating it—and that he would use those quotations or refer to them for the purpose of determining in his own mind as to whether or not the Communist Party believed in or advocated force and violence, or, in short, was an unlawful organization. On cross-examination he admitted, in so many words, that he was not an expert nor did he profess to be an expert; he was simply a policeman, looking for evidence. That is the gist of his testimony. We objected to it on the ground that no proper foundation was laid for the introduction of this evidence. In the first place, it was evidence seized on illegal raids, and the subject of a motion to suppress heretofore made.

Mr. Hennessy: Oh, no; it was seized by a police officer.

Mr. Andersen: It was seized by a police officer in an illegal [471] raid.

Mr. Hennessy: The federal provision does not apply to cases of that kind.

(Testimony of William Schneiderman.)

Mr. Andersen: And, furthermore, even if we were to assume the correctness of Mr. Hynes's testimony, there is no evidence, so far as Mr. Hynes is concerned or so far as this particular document,—Plaintiff's Exhibit 27,—is concerned, that it was ever an official document of the organization which is before the Court. Now, this document here, so far as this witness is concerned, and as he has testified,—and this man is quite an expert on the subject,—he was a member of this organization for years—is not an official document of this organization which is before the Court.

Mr. Hennessy: That is your statement. It was issued by the Party. If it is not official, how could it become official?

Mr. Andersen: The only evidence tending to show it was ever used by this organization is the statement of Mr. Hynes, who admitted that he took it out of the headquarters of the Communist Party during one of his illegal raids. That is insufficient.

Mr. Hennessy: Is that all of your statement?

Mr. Andersen: Yes.

Mr. Hennessy: I will read from page 91——

The Court: Might I offer a suggestion? If there is any doubt about this, maybe the witness on the stand can give us more information in regard to this.

Mr. Andersen: I think your Honor's suggestion is a good one.

Mr. Hennessy: There is no doubt about it, your Honor. The testimony of Mr. Hynes is as follows:

(Testimony of William Schneiderman.)

"Mr. Mercado: Q. I will show you a pamphlet and ask you if you have ever seen that pamphlet before. A. Yes, I have.

"Q. Where and under what circumstances?

"A. I have seen a copy of this 'Programme and Constitution of the Workers Party of America,' [472] when I joined the organization.

"Mr. Andersen: What is the date of that?

"The Court: Q. Has it a date?

"A. It is December 24, 25, 26, 27, 1921, amended at National Convention, Chicago, Illinois, December 30-31, 1923, and January 1, 1924. As I say, I received a copy of the 'Program and Constitution' when I joined the organization. This particular copy, however, was taken on the arrest of Sam Globerman, at 322 West Second Street, on August 6, 1927. I recall specifically receiving a number of copies of this 'Program and Constitution,' in 1925 or 1926, on the ground floor of the Simpson Building, I think it is on Third and Spring Street, in Los Angeles. I know that I have about 18 or 20 copies of this, which was circulated by the parties at that time."

It was circulated by the Communist Party. It was delivered to Mr. Hynes when he joined the Party. It is part of their propaganda. It purports to have been issued by the Workers Party. It came from the office of the Workers Party.

(Testimony of William Schneiderman.)

Mr. Andersen: That is true; it purports, on its face, to be issued by the Workers Party of America, although the word "Workers" is partly concealed by the paper placed on the front of it. He did not state he received a copy of it when he joined the Communist Party. Of course, the inference there is, although it is not stated, he received it when he joined the Communist Party—although that is not definitely stated; but, even so, the evidence is insufficient. Now, it is true they may have received a copy of this; but there is no showing that this literature was printed by that organization or circulated by that organization.

Mr. Hennessy: He testified it was circulated.

Mr. Andersen: That is only his conclusion.

Mr. Hennessy: No; that is the fact.

Mr. Andersen: It is only his conclusion. [473]

Mr. Hennessy: He testified to the fact, to the circulation.

The Court: Pass the copy up to me.

Q. Were you a member of the Workers Party of America in 1924? A. Yes, sir.

Q. You were, in 1921? A. No.

Q. 1921 and 1922?

A. I joined the Young Workers League in the spring of 1922. I joined the Workers Party at the end of 1924; and I believe I was accepted and admitted to membership at the beginning of 1925.

The Court: The objection will be overruled.

Mr. Hennessy: May I have the question read?

(Testimony of William Schneiderman.)

Mr. Andersen: I would like to have the Court rule upon my motions at the present time.

The Court: Very well, the objection will be overruled.

(Question repeated by the reporter)

A. I presume that the program and constitution, if that is the program adopted by a convention, it was circulated as a draft for discussion. I, myself, as I said before, do not remember this particular pamphlet; but I do recall that drafts of the constitution and program were frequently presented to the membership for discussion, after every conference or convention of the Party.

Mr. Hennessy: Q. There is nothing about this program and constitution that would lead one to believe that it was a draft, is there, Mr. Schneiderman?

A. Not in this pamphlet, except my understanding and the statement of our Party officials that no program or constitution was ever officially adopted by convention, or ratified by the membership, until 1938.

Q. When you joined the Communist Party of America, what were the aims and objectives of that party?

Mr. Andersen: Might I object to the form of that question? [474] The question, I think, can be properly divided in two subdivisions, namely, first: "What was the name of the Party?"; and then, secondly, "What were the aims of the organization," as understood by the witness.

(Testimony of William Schneiderman.)

The Court: Read the question. (Question repeated by the reporter) The objection is overruled. You may answer.

A. As I understand the aims and objectives of the Workers Party, its purpose was to organize and educate the people, particularly the working class, to understand the nature of capitalistic society, to study the history of the class, and to accept the program of a socialistic system of society. That was my understanding of the aims and objectives of the Party.

Mr. Hennessy: Q. What did you understand by the "socialistic system of society"?

A. A system of society in which the basic means of production and exchange would be socially-owned by the people, through their representative form of government.

Q. Through a representative form of government? A. Yes.

Q. The nature, then, of the socialistic society as contemplated by the Workers Party is not that contemplated by the Communist Internationale?

A. I believe that the socialistic system of society was generally along the same lines as it is stated in the program of the Communist Internationale.

Q. Did not the Workers Party of America have as its objective the establishment of a communistic society?

A. That is not an exact term. The term "communism" is not used synonymously with socialism. We see society in the process of development, and

(Testimony of William Schneiderman.)

we believe that, if the means of production and exchange are owned socially, that this would be the first stage of a new order of society which would eventually develop into communism.

Q. Your objective was to establish a new communistic society? A. Yes, ultimately. [475]

Q. And the first step would be the control by the workers of the means of production and of distribution?

A. The first step would be the establishment of social ownership of the means of production, but control by the workers could not be established except through some form of government which would take the means of production into its own hands.

Q. That form of government is usually referred to as "the dictatorship of the proletariat"?

A. No; it is not.

Q. What form of government would it be, then?

A. I can refer back to the quotation I made in my statement: that the dictatorship of the proletariat referred to the rule of a particular class of society. In fact, Lenin stated that the dictatorship of the proletariat is not a form of government but a state of things. It reflects a rule of a particular class in society, in relation to other classes and in its relation to social conditions of the period. In other words, when we speak about the dictatorship of the proletariat, we do not speak of putting in any specific form of government.

Q. But you speak of a form of government in

(Testimony of William Schneiderman.)

which the workers control the agencies of the government; isn't that correct?

A. No. We speak about the system where the majority of the people—which includes the working class,—controls the agencies of the government.

Q. Why is it called "the dictatorship of the proletariat," then?

A. Because we believe that, in the broad sense of the word, every state is essentially the instrument of one particular class or group of society.

Q. In this country, what group is in the control of the government, in your opinion?

A. It is our belief that the United States of America, as well as any capitalistic society, reflects the [476] economic interests of the dominant class, —the monopolistic class.

Q. Do you believe that the states in the United States are dominated by the capitalistic class?

A. Yes, I believe that its main functions are influenced by those who own the basic means of production.

Q. And the Communist Party wants to bring about the change of that condition, doesn't it?

A. The Communist Party wants to bring about the condition whereby the majority of the people will influence the state as much as if not more than the monopoly capitalists.

Q. As a matter of fact, they want to abolish all classes, don't they?

A. No; they do not want to abolish all classes.

(Testimony of William Schneiderman.)

They believe that the development of society will eventually reach a stage where class distinction will disappear; but we do not believe that we can abolish all classes.

Q. But you are in favor of that, are you not?

A. I believe that it would be desirable that there should be no class struggle and no difference between classes.

Q. And you advocate that condition, do you not?

A. I do not know whether you would call it "advocate." I certainly predict that, if socialism is the order of society under which we would live, classes would probably disappear.

Q. And since 1922, when you affiliated yourself with the Communist organization, you have done all you could to further that, have you not?

A. I have done all I could to educate the people in the principles of socialism.

Q. To the end that all classes will be abolished?

A. As I said before, I do not think that that depends on the will of the Communist Party. That would be contrary to the teachings of Marx. I believe that is the process that will inevitably come about. [477]

Q. You believe that is a good thing?

A. If it does away with the subjugation of one class by another, I think that would be desirable.

Q. Do you believe that the United States Government is dominated by the capitalistic interests of the United States?

(Testimony of William Schneiderman.)

A. I think there are plenty of indications in present-day history to prove that.

Q. And the United States Government is regarded by you as a capitalistic government?

A. No; I regard the United States Government as a democratic form of government. The present system of society is what we describe as "a capitalistic system." We do not attribute to any particular form of government a term which expresses economic relationship; but we do think that a certain type of government might be influenced or reflect interests of some particular class.

Q. Do you regard our Government as an instrument of the capitalistic class?

A. I believe that there are plenty of actions of the Government which would indicate that it carries out certain wishes of the dominant group of society. I might give instances.

Q. And you are anxious to bring about a change in that, are you not?

A. I would like to see that the Government would become more interested in favor of the people. I might say that the Government at times does express the interests of the people, but it seems to me that the Government's actions are the result of a certain form of pressure in which, at times, the opinion of the mass of the people is reflected in the actions of the Government, in which case they will carry out the wishes of the people. At other times, they reflect the interests of the dominant group in

(Testimony of William Schneiderman.)

society; and, at that time, they carry out the wishes of the dominant group. Unfortunately, I believe, more often it reflects [478] the influence of the monopoly class, although, as I have stated, in recent times there are plenty of instances where, by definite processes, the people have been able to influence the Government to carry out their wishes in regard to their interests.

Q. Do you believe that it will be possible to bring about this socialization by democratic processes in this country?

A. Yes, I do; and I certainly hope so.

Q. You disagree with John Strachey in that regard, do you?

A. I do not see any contradiction between what I have said and what John Strachey has said.

Q. Didn't you show, in this preface that you read yesterday, he did not believe that it could be brought about by democratic process?

A. No; he said that he did not believe that the dominant group would permit peaceable means to bring about the change in the system of society; and he said, if revolution occurs, it will be because the dominant group will itself use forms of repression which will bring about revolution. In fact, his contention is, as already stated in my statement, the Marxian theory.

Q. I will read from page 16, Mr. Schneiderman, of this book of John Strachey, "The Coming

(Testimony of William Schneiderman.)

Struggle For Power," the introduction, in which he uses the following language:

"It is not true that there exists today in England and America democratic, constitutional machinery which can be used for the abolition of capitalism and the organization of socialism."

Do you agree with that?

A. Is that in the preface, or in the body of the book?

Q. It is in this introduction from which you read yesterday.

A. I do not think that one can compare mechanical conditions in Great Britain and America. Mr. Strachey's opinion seems to be that there is no possibility that democratic, constitutional means will [479] bring about the development of socialism. I do not think that one can predict this definitely one way or other, because our theory is that the development of revolution depends entirely upon what the dominant case will do. I have already stated that, on numerous occasions, Marx and Engels and Lenin state that, under certain conditions, it was possible for a revolution to take place peacefully and by democratic means; but that does not depend so much on the will of the people or any particular party or individual, but depends on the manner in which the dominant group reacts under certain conditions in society.

Q. Did he state it might be possible in England and the United States that this revolution could be

(Testimony of William Schneiderman.)

brought about by peaceable means?

A. Yes; he said that the state will not use the means of repression.

Q. But he also contemplated that, by the force of circumstances, the proletariat might be compelled to use force to bring about this change, didn't he?

A. He said that the history of revolutions was that, when a majority of the people wished a change in the existing system and the minority used repression against them, they have always resorted, if they could not use peaceable and constitutional means—they have always resorted to revolutionary means. I think that his prediction was that the lesson of history will repeat itself.

Q. What are your views in regard to the abolition of private property?

A. I believe, as Marx did, that essentially private property is something which is not enjoyed by all, even today, because the very process of development of capitalism generally brings private property; and that is merely the means of production and exchange in the United States, to a small group, monopoly capitalists; and, furthermore, the development of capitalism is such [480] that the capital not only of workers but the middle-class is expropriated, in the sense that they also are thrown into a class,—a working class,—by the development of competition and the inability to stand up against big capital. In other words, this condition shows that private property for the big majority of the

(Testimony of William Schneiderman.)

people is a myth.

Q. You believe that private property is a myth in the United States?

A. In the sense that the means of production and exchange, which are the basic forces in any society, are in the hands of a few people; and our contention is that private property should belong to all the people.

Q. That there should be no private property?

A. No; that is not correct. We have stated that we believe in the retention of all personal property for personal use; but we do not believe that the means of production should be in the hands of a few, because those means of production are used as an instrumentation of the exploitation of the many by the few. In fact, I could quote from a document which I think was introduced yesterday in evidence, from the "Constitution of the Soviet Union," that private property is protected by law; that is, that all property for personal use is protected by law, as well as all income from work and savings are protected by law. In other words, we do not contemplate the abolition of all private property.

Q. Did Marx contemplate the abolition of private property?

A. Not of all private property; no.

Q. I will direct your attention to some remarks of Marx; and ask you to construe them—on page 23 of the Communist Manifesto, Government's Exhibit No. 7——

(Testimony of William Schneiderman.)

The Court: Q. Would you term a farmer "a capitalist"? A. No.

Q. Why?

A. There are distinctions among farmers. There are [481] some farmers who, if they employ labor, exploit labor, and would be considered capitalists, in that sense.

Q. What about a million farmers that do not employ labor?

A. We do not consider them capitalists.

Q. How do you make that distinction?

A. The distinction is because they do not exploit labor; in fact, we do not even consider a farmer a capitalist who occasionally has to hire seasonal labor in order to get in his crop; but our term of "capitalist" refers to the large-scale farmer.

Q. Then, there would be classes, as far as farmers are concerned?

A. Yes, there are also class distinctions among farmers, in our opinion.

Mr. Hennessy: Q. I direct your attention to the following language used by Marx in the "Manifesto of the Communist Party," being United States Exhibit No. 7 in evidence, from page 23:

> "The distinguishing feature of Communism is not the abolition of property generally, but the abolition of bourgeois property."

What do you mean by "bourgeois property"?

A. That means the ownership of the means of production and exchange.

(Testimony of William Schneiderman.)

Q. The bourgeois is a group,—a class in society,—is it not?

A. The bourgeois usually refers to the capitalist class.

Q. And the "abolition of bourgeois property" means abolition of property of the capitalistic class, does it not?

A. No; it does not. If I may, I could explain that and show how dangerous it is to read simply one sentence——

Q. (Interrupting) You will have an opportunity to do that, later.

Mr. Andersen: May he be permitted to explain on that situation, as we go along, in order that the context may appear?

Mr. Hennessy: No; I think I have a right to question this witness. On redirect examination, you can do that, if you want to. [482]

The Court: Proceed.

Mr. Hennessy: Q. The book further proceeds with this language:

> "But modern bourgeois private property is the final and most complete expression of the system of producing and appropriating products that is placed on class antagonism, on the exploitation of the many by the few. In this sense, the theory of the Communist may be summed up in the single sentence: abolition of private property."

(Testimony of William Schneiderman.)

Does that express your views?

A. I would like to express my views.

Q. I am asking you this question; answer it "Yes" or "No," and then you can make any explanation you wish.

A. I would answer "Yes," if it is understood that he is referring to a historical epoch and of the transition of one form of society to another; but I do not think that that expressly accurately our views regarding private property, and I would like to explain why.

Q. Did it meet your views when you were admitted to citizenship on June 10, 1927?

A. I think I said, before, that, at the age of 16 or 18, I would not presume to have had a complete knowledge of all aspects of the Marxian theory.

Q. You were older than 16 or 18 when you were admitted to citizenship, weren't you, on June 10, 1927?

A. I applied for citizenship at the age of 18.

Q. I am questioning when you were admitted to citizenship, June 10, 1927.

A. I would say that, in so far as I understood the Marxian theory at that time, it expresses my general views. I would like to explain this particular phrase, though, because, when one sentence is taken out of a whole work or a whole series of works, it is very easy to read something into it which it is not. [483]

The Court: Q. Did he read anything into it?

(Testimony of William Schneiderman.)

A. Yes; he read into it the abolition of all private property.

Mr. Hennessy: That is what Marx stated: abolition of private property.

The Witness: The abolition of private property, in this sense, refers to the abolition of the ownership of the means of production and exchange.

Mr. Hennessy: Q. He says, "abolition of bourgeois property"; and you say "bourgeois" is "capitalism"?

A. That is taken from Marx, to indicate what Marx meant by this phrase.

Q. I will direct your attention to the language used on page 25 of the "Manifesto of the Communist Party," by Karl Marx and Friedrich Engels, being Government's Exhibit No. 7, in which it is said:

> "In a word, you reproach us with intending to do away with your property. Precisely so; that is just what we intend."

Did that express your views when you were admitted to citizenship?

A. I think that is a rhetorical phrase which is frequently used in polemics.

Q. What are your views in regard to the abolition of countries or nationalities?

A. I do not believe in abolition of countries or nationalities, because I do not believe that they can be abolished by any particular act or will of society.

Q. Do you think it desirable that countries and

(Testimony of William Schneiderman.)

nationalities be abolished?

A. No; I do not believe they can be abolished, because they grow from certain historical, cultural and economic roots.

Q. I direct your attention to the following language contained in the "Manifesto of the Communist Party," by Karl Marx and Friedrich Engels, United States Exhibit No. 7 in evidence, which says, at page [484] 28:

> "The Communists are further reproached with desiring to abolish countries and nationality. The workingmen have no country. We cannot take from them what they have not got. Since the proletariat must first of all acquire political supremacy, must rise to be the leading class of the nation, must constitute itself the nation, it is, so far, itself national, though not in the bourgeois sense of the word."

Do those lines meet with your approval?

A. I think what Marx meant there is that the interests of the working people everywhere are international.

Q. Can you answer that question "Yes" or "No"?

A. No; I cannot answer that "Yes" or "No." I cannot discuss a philosophical or moral concept by saying "Yes" or "No."

Q. What are your views in regard to the abolition of countries and nationality?

(Testimony of William Schneiderman.)

A. I think I have stated them already: that nations and countries, nationalities and countries, grow out of certain historical, economic and cultural roots. I do not believe that they can be abolished. Perhaps the relationship between them may change at some time in some future development of society, but I certainly do not think that they can be abolished.

Q. Do you believe that workingmen have no country?

A. No; I believe every workingmen has a country, a country to which he owes allegiance.

Q. Did Lenin teach that this change from the capitalistic system to the rule of the proletariat could be brought about by peaceable means?

A. Lenin's views were essentially the same as Marx's views; but that lessons in history indicated that no revolution could be peaceable as long as the dominant class of society would use methods of repression against the people.

Q. He taught, did he not, that the use of force by the proletariat [485] was necessary in order to crush capitalism?

A. He taught, under the conditions of Tzarist Russia, with the repression used against the workers and peasants there, that the use of force would be necessary; but I would like to explain that Lenin never believed that force should be used unless the majority of the people had exhausted all peaceable and other democratic means of bringing about the

(Testimony of William Schneiderman.)

change that they desired, and that his speaking about the use of force was simply another example of what historical development had taught us: that is, that a change could be expected if the ruling class of any particular society submitted to peaceful and democratic means, and, if they did not submit to peaceful or democratic means, then the majority of the people took things into their own hands.

Q. What disposition was to be made of the holdings of landed proprietors, in this change, Mr. Schneiderman? A. Do you mean in Russia?

Q. No; in this country or wherever the change was consummated.

A. We have not contemplated the exact means of what socialism means for land. We do believe that it would probably be operated on a cooperative basis, by the means——

Q. Doesn't it agitate the nationalization of all landholders? A. Doesn't what?

Q. The socialistic program.

A. Our program believes that all of the means of production—and that includes agriculture—require social ownership.

Q. There is no provision made for compensation of private owners whose property is expropriated, is there?

A. Well, that depends upon what a particular government decided should be the means of establishing social ownership; that is something that we cannot predict, although I might say that Lenin

(Testimony of William Schneiderman.)

stated, at one time, that it was directly conceivable, under certain conditions, nationaliza- [486] tion could take place, with compensation; but there might be some confusion when we speak about "nationalization." We Communists of America of today speak about the nationalization of the banks, the railroads and the munition industry; but we are not proposing nationalization—For instance, we are proposing nationalization, in the ordinary accepted sense of the word,—that is, government ownership, with compensation, because we do not believe that social ownership can take place, under the present order of society, until the majority of the people want social ownership.

The Court: We will take a recess for a few minutes.

(After Recess)

Mr. Hennessy: Q. Mr. Schneiderman, I direct your attention to the following statement contained in the "Manifesto of the Communist Party," by Karl Marx and Friedrich Engels, being United States Exhibit 7 in evidence, at page 44:

> "The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing conditions. Let the ruling classes tremble at the Communist revolution."

Does that meet with your approval?

A. I look upon this as a document which was

(Testimony of William Schneiderman.)

written in 1848, and applying to conditions in Europe at that particular time.

Q. Stalin believes that force has to be used to bring about this dictatorship of the proletariat, doesn't he? A. What is that?

Q. Stalin believes that force has to be used to bring about this dictatorship of the proletariat, doesn't he?

A. Stalin accepts the general Marxian principles on that.

Q. I direct your attention to "The Theory and Practice of Leninism," by I. Stalin, being United States Exhibit No. 11 in evidence, page 30, and direct your attention to the following language:

[487]

> "The dictatorship of the proletariat is born not of the bourgeois state of things but of its destruction at the overthrow of the bourgeoisie, of the expropriation of landed proprietors and capitalists, of the socialization of the essential instruments and means of production, of the development of the proletarian revolution through violence. The dictatorship of the proletariat is the revolutionary power resting on violence against the bourgeoisie."

Doesn't he there contemplate that the proletariat dictatorship shall be developed through violence?

A. I believe that reference you have given relates to Russian conditions and history and development of the Russian revolution.

(Testimony of William Schneiderman.)

Q. It expresses that philosophy, doesn't it?

A. Yes, it does.

Q. And his philosophy is approved in the constitution of the Communist Party of the United States of America, isn't it?

A. It is not his philosophy; it is Marx and Lenin.

Q. That is the philosophy of Marx, Engels, Lenin and Stalin?

A. Yes. Stalin is considered one of the disciples of Mr. Marx.

Q. And Stalin, in this quotation, contemplates the expropriation of landed proprietors and capitalists, doesn't he?

A. He speaks about a development of the Russian revolution there.

Q. He uses the language, "expropriation of landed proprietors and capitalists," doesn't he?

A. Yes.

Q. He does not believe in the expression of Marx that it may be possible to bring about this revolution through democratic processes?

A. If you are trying to find a contradiction between Stalin's views and Marx', I do not think you will find it. Stalin generally believes in the Marxian theory; and Marx stated under certain conditions revolution might be obtained peaceably.

Q. Might possibly be attained peaceably?

A. Yes.

Q. I will direct your attention to the following

(Testimony of William Schneiderman.)

language contained [488] at page 32 of this book, "The Theory and Practice of Leninism," by I. Stalin, being United States Exhibit 11, which says:

> "Second deduction. The dictatorship of the proletariat cannot be the result of the peaceful development of bourgeois society and democracy; it can be the result only of the destruction of the bourgeois army and state machine, the bourgeois administrative apparatus and the whole bourgeois political system."

And, down below, a few lines, he says:

> "Marx's limitation with regard to the 'continent' has furnished the opportunists and Menshevics of every country with a pretext for asserting that Marx admitted the possibility of a peaceable transformation of bourgeois democracy into proletarian democracy, at least some countries (England and America). Marx did in fact recognize the possibility of this in the England and America of 1860, where monopolist capitalism and imperialism did not exist and where militarism and bureaucracy were as yet little developed. But now the situation in these countries is radically different; imperialism has reached its apogee there and there militarism and bureaucracy are sovereign. In consequence, Marx's restriction no longer applies."

Now, apparently Stalin believed that in order to bring about this change in America at the present

(Testimony of William Schneiderman.)

time force and violence would be necessary, didn't he?

A. Not necessarily. He was speaking about a certain argument against socialism. He believes that, under conditions, a revolution could take place by peaceful means; and he was simply dealing with—Marx did not refer to the possibility of the peaceful revolution wherever repression might be used by the minority against the majority.

Q. I direct your attention to the "Programme of the Communist International," being United States Exhibit No. 6, Mr. Schneiderman. [489] You subscribe to this program, do you not?

A. I have not, as I have identified——

Mr. Andersen: (Interrupting) Is that the document that was published in 1928?

Mr. Hennessy: Yes; it was published by the Workers Library Publishers.

The Witness: A. ——I agree with the general theoretical conclusions.

Q. Do you subscribe to their conclusions in regard to the abolition of private property?

A. In so far as they expand the Marxian theory, yes.

Q. Do you subscribe to "The Platform of the Class Struggle," being the national platform of the Workers Communist Party, I think, of 1928, U. S. Exhibit 15?

A. I think I have stated that I am not familiar with this particular platform, and I could not say

(Testimony of William Schneiderman.)

except generally that I was in agreement with it, because, as I have said, the author of this platform was subsequently expelled from the Party.

Q. Did you support the candidates for president of the Communist Party or the Workers Communist Party in 1928? A. Yes, I did.

Q. They ran on this platform, didn't they?

A. I think they did.

Q. Who were the candidates that year?

A. Foster for President and Gitlow for Vice-President.

Mr. Andersen: I think the record should show, at this time, that it was a year after that he was admitted to citizenship.

Mr. Hennessy: Yes. His activities afterwards are admissible, to show his state of mind at a particular time.

Q. I show you this book entitled, "The Second Year of the Workers Party of America," being United States Exhibit No. 13 in evidence, Mr. Schneiderman; it is a report of the central executive committee [490] of the Third National Convention, held in Chicago, Illinois, December 30-31, 1923, and January 1, 2, 1924; and I will ask you if you subscribe to the program and resolutions contained in this book. Are you familiar with the book?

A. No; I am not familiar with this program. I believe this was before my membership in the Party, and did not attend the conventions, and I do not recall.

(Testimony of William Schneiderman.)

Q. You joined the Party in 1922, didn't you?

A. No; I did not.

Q. You joined the Young Workers League?

A. The Young Workers League; but we did not consider ourselves bound by the Workers Party program.

Q. You joined the Workers Party in what year?

A. At the end of 1924.

Q. You referred to certain quotations specifically of Abraham Lincoln and Thomas Jefferson as justifying the use of force by the majority to bring about a change in government. Do you believe in those principles?

Mr. Andersen: I believe, may it please the Court, that he has not properly stated the evidence. As I understand it, those quotations were introduced, of course, but not for the purpose of justifying a revolution. They were introduced, as I understand it, for what they showed on their face, without Mr. Hennessy paraphrasing them.

Mr. Hennessy: I think he did quote from them to justify a revolution. That is the only purpose they could be offered for.

The Court: Read the question (Last question repeated by the reporter.) The witness may answer.

The Witness: A. I referred to Jefferson and Lincoln because, in my statement, I indicated that a recognition of certain historical facts was not necessarily limited to the Communist doctrine; and I fur-

(Testimony of William Schneiderman.)

ther stated that our recognition of those facts and our [491] analysis of them is not only admitted by the Communist Party but is also admitted by authorities in American political life who were revolutionaries in their own particular days. I introduced those quotations in order to bear out my claims that there was no essential difference in our analysis of the historical processes, including revolutions, than those stated by Jefferson and Lincoln; and in so far as they state that under certain conditions a majority of people can change the government or use revolutionary means to change the government, I think that they bear out the main contention of the general features of Marxism.

Q. And of the Communist Party?

A. So far as we apply Marxism, yes.

Q. You believe, in the event of the Communist Party becoming a majority party of the United States, they would be justified in using force and violence to bring about a change in our form of government?

A. No. I stated that I believed that the majority of the people, if peaceful, democratic and constitutional means were no longer open to it, by reason of the illegal resistance of the dominant group —I would say that the majority of the people, if they felt that there were no longer means of attaining their end, would be justified in establishing a government that expressed their beliefs and desires; and, as far as the Communist Party is concerned,

(Testimony of William Schneiderman.)

the Communist Party would not propose or advocate in any way the use of force if they were able to attain a majority; but we have to assume that, if it were possible for the Communist Party to attain a majority in this country, it would be able by peaceable, democratic and constitutional means to achieve its program unless some illegal force was used gainst that majority.

Q. In the event of a war between the United States of America and [492] the Union of the Soviet Republic, would you be willing to bear arms on behalf of the government of the United States against Soviet Russia?

A. Yes. I believe that is one of the obligations of citizenship.

Q. Would you do it?

A. I would: but that would not reflect my particular opinion of such a war.

Q. What is your particular opinion of such a war?

Mr. Andersen: I object to that as being speculative, may it please your Honor, and beyond the scope of the direct examination.

The Court: The witness may answer.

The Witness: A. First of all, I do not conceive of the possibility of a war between the United States and the Soviet Union. I do not see any particular reason for it, unless the economic groups in power in this country would deliberately incite such a war in order to destroy the Soviet Union. As for

(Testimony of William Schneiderman.)

the Soviet Union, I do not believe that the Soviet Union would at any time engage in an aggressive war against the United States. That is why I say I cannot conceive of the possibility of such a war.

Mr. Hennessy: Q. Well, in the event it did happen, what would be your position?

A. My position would be that I would bear arms.

Q. You would bear arms against Soviet Russia?

A. If I were so required, yes; but my opinion of such a war, if I believed it to be an unjust war, would still be my own; that is, if I believe that the United States was engaged in an unjust war against the Soviet Union, I believe that I would have the right to those opinions and express them.

Q. Would you refuse to bear arms?

A. No; I would not.

Mr. Hennessy: I think that is all. [493]

Redirect Examination

Mr. Andersen: Q. You were asked by Mr. Hennessy several questions bearing upon the interpretation of the attitude of Marx and the Communists toward private property. Now, will you explain in detail your views in reference to those questions?

A. Yes. The question referred to a particular phrase which seemed to indicate that the Communists and Marxists believed in the abolition of all private property. I insist that this is an incorrect interpretation which can only be taken by taking one sentence out of a context. Now, the particular

(Testimony of William Schneiderman.)

context to which Mr. Hennessy referred deals with the whole argument of how, under capitalism, the property of the working class and also of the middle class is expropriated by the very process of capitalism itself; that is, that workers do no longer own the tools and means of production, that the middle classes are gradually transferred into the ranks of the working class, and that this expropriation is one of the inevitable features of the nature of capitalism.

In the course of this argument, the Communist manifesto says—Just one moment. One of the quotations cited by Mr. Hennessy was: "In this sense, the theory of the Communist may be summed up in the single sentence: Abolition of private property."

Q. What page is that?

A. In my particular text here, it is page 23, Part II. But the preceding paragraph indicates that this was just a rhetorical conclusion of a whole argument; for instance, the manifesto says:

> "The distinguishing feature of Communism is not the abolition of property generally, but the abolition of bourgeois property. But modern bourgeois private property is the final and most complete expression of the system of producing and appropriating products that is based on class antagonisms, on the exploitation of the many by the few." [494]

In other words, he refers to one kind of property

(Testimony of William Schneiderman.)

which is the instrument of the exploitation of the many by the few. That is what we refer to as the means of production and exchange which we believe should be socially owned; and it was to this Mr. Marx referred when he spoke of the abolition of private property.

I quote further:

> "We Communists have been reproached with the desire of abolishing the right of personally acquiring property as the fruit of a man's own labor, which property is alleged to be the groundwork of all personal freedom, activity and independence. Hardwon, self-acquired, self-earned property! Do you mean the property of the petty artisan and of the small peasant, a form of property that preceded the bourgeois form? There is no need to abolish that; the development of industry has to a great extent already destroyed it, and is still destroying it daily."

Now, Marx here refers with scorn to this argument that the Communists believe in the abolition of all private property; and he considers it even beneath him to answer this argument, because his explanation all through the manifesto and through his other works is that, in the main, private property, for the great majority of the people, has already been abolished, and not by the act of a group or a government or a party but by the process of

(Testimony of William Schneiderman.)

capitalistic exploitation itself. I quote further:

> "To be a capitalist, is to have not only a purely personal, but a social status in production. Capital is a collective product, and only by the united action of many members, nay, in the last resort, only by the united action of all members of society, can it be set in motion.
>
> "Capital is therefore not a personal, it is a social power.
>
> "When, therefore, capital is converted into common property, [495] into the property of all members of society, personal property is not thereby transformed into social property. It is only the social character of the property that is changed. It loses its class character."

Mr. Hennessy quoted another sentence, in which he said:

> "In a word, you reproach us with intending to do away with your property. Precisely so; that is just what we intend."

Mr. Hennessy: There is no ambiguity to that.

The Witness: If you will permit me to read the preceding paragraph, you will see this is a very ambiguous quotation from Marx:

> "You are horrified at our intending to do away with private property. But in your existing society, private property is already done away with for nine-tenths of the population:

(Testimony of William Schneiderman.)

its existence for the few is solely due to its non-existence in the hands of those nine-tenths. You reproach us, therefore, with intending to do away with a form of property, the necessary condition for whose existence is the non-existence of any property for the immense majority of society."

Now, when he goes on to say, "In a word, you reproach us with intending to do away with your property. Precisely so; that is just what we intend," he is giving a rhetorical answer to a charge which is made that the Communists intend to do away with all property; and the answer, of course, is that capital has already done away with private property for nine-tenths of the population. He does not refer to all private property, because, obviously, even the poorest person may own some little personal belongings, which is private property. He refers, when he says that nine-tenths of the population do not own private property, to the means and tools of production, to those things which we say should be socially owned because they have a social character of production. [496] He does say, taking one of these sentences and reading it: the abolition of all private property.

I would like to quote further on this. My quotation is from Marx's book, "The Civil War in France," referring to the Paris Tribunal:

"* * * 'The Commune,' they exclaim, 'intends

(Testimony of William Schneiderman.)

to abolish property, the basis of all civilization.' Yes, gentlemen, the Commune intended to abolish that class property which makes the labor of the many the wealth of the few. It aimed at the expropriation of the expropriators. It wanted to make individual property a truth by transforming the means of production, land and capital, now chiefly the means of enslaving and exploiting labor, into mere instruments of free and associated labor. But this is Communism, 'impossible' Communism! Why, those members of the ruling classes who are intelligent enough to perceive the impossibility of continuing the present system—and they are many—have become the obtrusive and fullmouthed apostles of cooperative production. If cooperative production is not to remain a sham and a snare; if it is to supersede the capitalist system; if united cooperative societies are to regulate national production upon a common plan, thus taking it under their own control, and putting an end to the constant anarchy and periodical convulsions which are the fatality of capitalist production—what else, gentlemen, would it be but Communism, 'possible' Communism?" Marx, "The Civil War in France," p. 44.

And one other quotation to illustrate this point: In an article, "The Peasant Question in France and Germany" (1894), Engels writes:

(Testimony of William Schneiderman.)

> "It is not to our interest to win the peasant today or tomorrow in order that if we are not able to keep our promise he [497] should fall away from us again tomorrow or the next day * * * Neither now nor at any future time can we promise the small peasants that individual property and individual working will be preserved in the face of the supremacy of capitalist production. All we can promise them is that we will not forcibly intervene in the conditions of their ownership against their will * * * And indeed we stand decidedly on the side of the small peasant; we will do everything in any way admissible to make his lot more bearable, to facilitate his transition to the cooperative, if he decides to take this step, and even, if he cannot as yet bring himself to this decision, to make a longer period of consideration possible for him on his holding."

Now, I believe that this answers the question as to whether we believe in the abolition of all private property.

Q. Now, with respect to the further questions asked you by Mr. Hennessy regarding the abolition of countries, would you tell me: do you or the Communist Party or Marx or Lenin advocate the abolition of countries?

A. No. The quotation which Mr. Hennessy read was preceded by the following sentence—which was a charge against the Communists:

(Testimony of William Schneiderman.)

"The Communists are further reproached with desiring to abolish countries and nationality."

Marx considers this too ridiculous to even answer. He said:

"The workingmen have no country——"

in the sense that the economic relations of a certain period and the social conditions of a certain period do not give any particular advantages to the workers; but to read into this that the workers have no country or nationality is a defamation of all historical evidence; and certainly he would be the last one to make such a claim or argument. [498]

Q. I mean: Are you in favor of the abolition of any countries? I assume, from Mr. Hennessy's questions, that he meant that you might be in favor of the abolishing of England. I do not understand it; but what is your view?

Mr. Hennessy: I will tell you what I meant. The Communist Party means the establishment ultimately of the communist society; that is what it means: whereby there will be no countries; there will be no classes; there will be no private property.

Mr. Andersen: That is your interpretation of it.

Mr. Hennessy: Yes, that is my interpretation, justified by their own writings.

Mr. Andersen: In order to clear it up:

Q. Do either you or the Communist Party or the Marx writings, as you understand them, advocate abolition of countries per se?

(Testimony of William Schneiderman.)

A. No. I do not think Marx attempted to answer this particular charge because it was one of those extravagant charges which are frequently made against the Communist Party, and he considered it beneath him to even answer. Of course, we do not believe in the abolition of countries. I consider the country in which I live and in which I work, and I certainly do not believe in the abolition of this country; and, as for nationalities, a nationality isn't something that can be abolished; a nationality grows out of a development of the people from certain historical, economic and cultural roots, and nobody can abolish them; they may change; the relation may change the development of the society, but it certainly cannot be abolished.

Q. Now, with respect, further, to the book written by Stalin and from which Mr. Hennessy quoted, with respect to the same question of private property, do you consider Stalin's interpretation of Leninism the proper Marxist view?

A. Yes, sir.

Q. And, as you understand it, is there anything in the writings of [499] Stalin—this, of course, is repetition—or the entire writings of Marx or Lenin, that contemplate the government's taking of all—and I mean all private property—from the citizens of the country, in the event of the establishment of the socialist regime?

A. No. As a matter of fact, there are other writings by Stalin which indicate that under cer-

(Testimony of William Schneiderman.)

tain conditions the Communists have proposed and do propose not the expropriation but there are certain steps towards nationalization which might even contemplate compensation; but that refers to a condition at a certain particular period, a certain stage in the development. When Stalin refers to expropriating certain things, he refers to the act of a particular government at a particular time. I believe he is referring to the experience of the Russian working class and of the actions of the Soviet government.

Q. Now, there is just one other question: At the time of being admitted to citizenship and five years prior to and ever since that date were you, during all of those times, attached to all of the provisions of the Constitution of the United States and all of the laws thereof?

A. As I understood, and as I understand now, the Constitution and laws of the United States, I believe that I was fully attached to them.

Q. Are you still attached?

A. Both to the spirit and letter of the Constitution.

Q. Are you fully attached to them at the present time? A. I am.

Q. Did you, at the time that you were admitted to citizenship, hold any mental reservation, or do you hold at the present time any mental reservation, in regard to that question?

A. No. I feel that both the spirit and the letter

(Testimony of William Schneiderman.)

of the Constitution should be applied in full force.

Q. Do you understand that there is anything in the law of the [500] United States or in the Constitution of the United States that would prevent or by law prohibit the establishment of a social system of economics in this country under our present democratic system?

A. I would say that it is theoretically conceivable that amending the Constitution may provide for that, but that is, as I see it, a purely academic question.

Q. In other words, briefly stating your problem, it simply is that the minority class, as you referred to them during the course of this trial, simply will not permit the majority of the people in this country to at any particular time institute a socialistic system of economics in the United States?

A. I believe that, if historical experience is correct, that that would probably be the attitude of the governing group in power today.

Q. And your organization and you, yourself, are striving, through peaceable means, to effect the alignment of the majority of the people in the United States with the views of your organization?

A. That is correct.

Q. In order to endeavor to administer the social economy in the United States, through Constitutional means and without any advocating or without any actual use or resorting to force and violence, to achieve that end?

(Testimony of William Schneiderman.)

A. We certainly desire so and hope that it can be had by that means.

Mr. Andersen: That is all.

Recross Examination

Mr. Hennessy: Q. When you became a citizen, of course, you desired to bring about in this country a condition of socialism, didn't you?

A. Yes.

Q. You thought it would be best for this country?

A. I did not believe that it could be done immediately. As I understood it, the development of socialism would be a long-range process. [501]

Q. But you favored it at that time?

A. I favored it, in a general, theoretical sense; but I certainly did not believe it could be done at that time or possibly for a long period of time after that.

Q. When you say, "in a general, theoretical sense," you mean a socialism as expressed in the writings of Marx, Engels and Lenin and Stalin, don't you?

A. Yes; except that my familiarity with writings at that time was limited to the writings of Marx, Engels and probably Lenin. I do not believe that any of the Stalin writings were in circulation or in use at that particular time.

Mr. Hennessy: That is all.

Mr. Andersen: That is all. We rest.

Mr. Hennessy: We rest.

The Court: Is the case submitted on both sides?

Mr. Hennessy: Yes.

Mr. Andersen: Yes.

The Court: How much time do you want for briefing?

Mr. Hennessy: I think we should have thirty days to put in our opening brief, because the reporter has to copy in the testimony of Professor Brown and Professor Thompson, and it is quite voluminous.

Mr. Andersen: Why not simply put it in as an exhibit?

Mr. Hennessy: These volumes belong to the Department of Labor, and would not be available to the Court.

The Court: How much time do you want?

Mr. Andersen: I should like to have forty-five days, may it please your Honor.

The Court: And how much time to answer?

Mr. Hennessy: Thirty days, your Honor.

The Court: Very well.

[Endorsed]: Filed Aug. 1, 1940. [502]

[Endorsed]: No. 9658. United States Circuit Court of Appeals for the Ninth Circuit. William Schneiderman, also known as Velvel Schneiderman, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the Dis-

trict Court of the United States for the Northern District of California, Southern Division.

Filed October 8, 1940.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit

No. 9658

WILLIAM SCHNEIDERMAN, also known as Velvel Schneiderman,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON APPEAL

The Appellant herein sets forth the points upon which he intends to and does rely in the consideration of his appeal:

1. Insufficiency of the evidence to show or prove any actionable fraud on the part of Appellant at the time of his naturalization.

2. Insufficiency of the evidence to show or prove any illegality on the part of Appellant in the naturalization proceeding in which appellant was granted citizenship.

3. Insufficiency of the evidence to show or prove that either Appellant, or any organization with which he was associated, or of which he was a member, believed in the overthrow of the government by force or violence, or advocated or taught such principles.

4. Insufficiency of the evidence to show or prove that Appellant, at the times mentioned in the complaint, disbelieved in organized government.

5. Insufficiency of the evidence to show or prove that Appellant, at the time of his naturalization was not, and had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.

6. That the Fourth Finding of Fact is not supported by the evidence.

7. That the Sixth Finding of Fact is not supported by the evidence.

8. That the Seventh Finding of Fact is not supported by the evidence.

9. That the Ninth Finding of Fact is not supported by the evidence.

10. That the statutes under which this proceeding was instituted are unconstitutional, and are unconstitutional as applied to Appellant insofar as they may attempt to restrict and abridge the right of Appellant to freely speak and to have freedom of thought and belief, and as denying Appellant the equal protection of the laws, within the meaning

of the First and Fifth Amendments to the United States Constitution.

11. That as such statutes are applied to Appellant they are unconstitutional in that the word "behavior" is not defined and has been unconstitutionally applied to Appellant.

Dated: October 25th, 1940.

ANDERSEN & RESNER,
Attorneys for Appellant.

[Endorsed]: Filed Oct. 30, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD

The appellant having failed to file or serve upon appellee a designation of record to be printed, the appellee files herewith its designation of record.

The appellee designates the following portion of the record to be printed:

(1) The certified record of the District Court in its entirety;

(2) All of the plaintiff's Exhibits designated as excerpts from the printed exhibits;

(3) All of the defendant's Exhibits designated as excerpts from the printed exhibits;

(4) All of government's Exhibits Nos. 1, 2, 3 & 27.

(5) All of the transcript of testimony in its en-

tirety excepting arguments of counsel;

(6) This Designation.

FRANK J. HENNESSY,
Untied States Attorney.

[Endorsed]: Filed Oct. 18, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

REQUEST FOR AND DESIGNATION OF RECORD

To the Clerk of the Above Entitled Court:

Appellant herein files herewith his request for and designation of those portions of the record, proceedings, and evidence to be contained in the record on appeal herein and to be docketed in the Circuit Court of Appeals.

Appellant herein requests and designates for inclusion in said record the following portions of said record:

1. Government's Petition.
2. Answer thereto.
3. All excerpts from various pamphlets offered as exhibits.
4. Findings of Fact and Conclusions of Law.
5. Opinion of Judge Roche.
6. Judgment rendered.
7. The complete transcript of the testimony of the witnesses William Schneiderman, Miles Hum-

phries, William Hynes, Professor Brown and Professor Thompson, eliminating from the transcript of the testimony all arguments and motions.

Dated: October 19th, 1940.

ROBERT W. KENNY,
GEORGE OLSHAUSEN,
ANDERSEN & RESNER,
Attorneys for Appellant.

[Endorsed]: Filed Oct. 21, 1940. Paul P. O'Brien, Clerk.

No. 9658

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

WILLIAM SCHNEIDERMAN, also known as VELVEL SCHNEIDERMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PARKER PRINTING COMPANY, 543 SANSOME STREET, SAN FRANCISCO

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, April 10, 1941.

Before: Garrecht, Haney and Healy,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. George R. Andersen, counsel for appellant, and by Mr. Frank J. Hennessy, United States Attorney, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, April 28, 1941.

Before: Garrecht, Haney and Healy,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

By direction of the Court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

OPINION

Before: Garrecht, Haney and Healy,
Circuit Judges.

Haney, Circuit Judge:

Appellant seeks reversal of a judgment cancelling and declaring void a decree of naturalization and certificate granted to appellant.

Appellant was born at Rumanov, Russia on August 1, 1905, and emigrated with his father to the United States at the age of three, arriving in New York City on September 22, 1908. Appellant filed his declaration of intention to become a citizen of the United States on February 8, 1924, stating therein: "I am not an anarchist." He filed his petition for naturalization on January 18, 1927, in which he stated:

> "* * * I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government * * * I am attached to the principles of the Constitution of the United States * * *"

On June 10, 1927, the proper court found that appellant "had in all respects complied with the Naturalization Laws of the United States, and that

he was entitled to be" admitted a citizen of the United States. It ordered that appellant "be admitted as a citizen of the United States of America". Certificate of Naturalization was issued.

On June 20, 1939, an attorney in the Immigration and Naturalization Service, Department of Labor, made an affidavit stating that before he was admitted to citizenship, appellant "declared on oath in open court that he would support the Constitution of the United States, and that he would support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same"; that the naturalization of appellant was fraudulently and illegally procured because (a) at the time of filing his petition for naturalization and during the five-year period preceding it, and at the time of his admission to citizenship, appellant "was not attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same"; and (b) at the time he took the oath of allegiance, appellant "did not in fact intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same"; and that during the period from a date five years prior to the filing of his petition for naturalization to the time of his admission to citizenship, appellant was a member of "the Workers (Communist) Party of America, which organization is opposed to the Government of

the United States, and teaches and advocates the overthrow of the Government of the United States by force and violence".

On June 30, 1939, appellee filed a complaint in the court below, alleging the facts stated above, and that appellant had concealed from the court on the hearing of the petition for naturalization the fact of his membership in the party mentioned above and the "Young Workers (Communist) League of America" and believed in and supported the principles of such organizations.

Appellant answered admitting membership in the Communist organizations and alleged, among other things, that such organizations, their principles, tenets, teachings and beliefs were not opposed or contrary to the principles of the Constitution, but supported the Constitution, and that such organizations did not believe in, teach or advocate the overthrow of the government, Constitution or laws of the United States by force and violence, or force or violence or otherwise, or at all.

The trial court held that appellant "by reason of his membership in such organizations and participation in their activities, was not 'attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same' " and "obtained his certificate of citizenship illegally". 33 F. S. 510, 513.

The court below found that appellant's certificate of naturalization was illegally procured because he was not at the time of his naturalization, and for

five years immediately preceding the filing of his petition had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same; that the decree and certificate of naturalization were fraudulently procured because appellant concealed from the court which entered the decree of naturalization the facts that at the time of the hearing of appellant's petition for naturalization, and during the five years immediately preceding the filing of such petition, he was a member of six communist organizations, and believed in and supported the principles of such organizations and of the Third International, of which the six organizations were a section; and that the decree and certificate of naturalization were illegally and fraudulently procured because before his admittance as a citizen, appellant declared on oath in open court that he would support the Constitution of the United States and that he absolutely and entirely renounced and abjured all allegiance and fidelity to any foreign state, whereas in truth and in fact, appellant at such times intended to and did maintain allegiance and fidelity to the Union of Soviet Socialist Republics and to the Third International, and intended to adhere to and support and defend the principles of the Third International.

The court below further found that during all the times material herein, the principles of the six organizations and the Third International were opposed to the principles of the Constitution of the

United States, and that such organizations advised, advocated and taught the overthrow of the government, Constitution and laws of the United States by force and violence and taught disbelief in and opposition to organized government. Judgment was entered cancelling and declaring void the decree and certificate of naturalization. This appeal followed. This action was commenced pursuant to 8 USCA §405, which provides in part:

> "It shall be the duty of the United States district attorneys for the respective districts * * * upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens * * * for the purpose of setting aside and cancelling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured * * *"

Appellant makes considerable argument to the effect that there was no proof of fraud. It is unnecessary to consider this contention. Cancellation of the certificate of naturalization is authorized by §405 on the ground of illegality. Appellant concedes the distinction between the two grounds, by saying: "Fraud and illegality are here two entirely separate tests and apply to distinct subject matters". He further says: "To establish illegality, as contrasted with fraud, it is necessary for the Government to show that the alien had failed to comply with all of the statutory prerequisities, or that the Court grant-

ing naturalization had similarly deviated from statutory requirements".

Appellant contends that the findings of the court below are not supported by the evidence. We think and hold that the findings of the court below to the effect that the certificate of naturalization was illegally procured, are not clearly erroneous. Federal Rules of Civil Procedure, Rule 52(a). See also: Rule 81(a)(6).

In 8 USCA §381 it is provided regarding an applicant for citizenship:

> "He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state or sovereignty and particularly by name to the prince, potentate, state or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same."

Under this statute, since the declaration of the alien is to be made "on oath", what he declares must be truthful. If he falsely makes the declaration, it seems clear to us that he obtains his citizenship illegally, if not by fraud, since the oath is a prerequisite to citizenship. (United States v. Schwimmer, 279 U. S. 644; United States v. Macin-

tosh, 283 U. S. 605), and the applicant does not, therefore, comply with the statute. That statute requires, among other things, that the applicant must honestly declare: (1) that he will support the Constitution of the United States; and (2) that he absolutely and entirely renounces all allegiance to any foreign state. The inquiry under that statute here is: did appellant falsely declare (1) that he would support the Constitution of the United States; and (2) that he renounced absolutely and entirely all allegiance to any foreign state.

Supporting that view is the statement in United States v. Ginsberg, 243 U. S. 472, 475, that if a certificate of naturalization is "procured when prescribed qualifications have no existence in fact it is illegally procured". To the same effect is United States v. Siem, 9 Cir., 299 F. 582, 583, where it is said that "illegally procured" in §405 "means procured contrary to the provisions of the law".

Appellant makes the further argument that he had complied with the procedural requirements set forth in 8 USCA §§373, 379, 381 and 399, and that therefore there could be no illegality unless §382 were violated. The latter section provides that at the hearing of the petition certain things must "be made to appear to the satisfaction of the court". Appellant argues, therefore, that since the court was satisfied as to his proof, no illegality is present. Such argument, however, is based on the assumption that appellant complied with §381 requiring a truthful declaration as above stated. As stated

above, the court below found that when appellant made the declaration on oath, he did not intend to support the Constitution of the United States, but intended to adhere to and support the principles of the Third International, and that appellant did not renounce his allegiance to foreign states, but maintained his allegiance to the Union of Socialist Soviet Republics and to the Third International. If these findings are sustained, then the judgment must be affirmed. Thus we arrive at the narrow question: are such findings clearly erroneous?

Appellant testified that he was and is attached to the principles of the Constitution of the United States; that he did not believe in the overthrow of the government of the United States by force and violence; that he "undertook the obligations of citizenship in good faith"; that he was not opposed to organized government; and that he was not a member of an organization "incompatible with the obligations of American citizenship". He also testified that he was at the time of making the declaration on oath a member of the Communist Party and fully believed in and supported its principles. His testimony in that respect was corroborated by a history of his extensive activities in the support of that party.

There was no direct testimony that appellant had any other beliefs than those mentioned, but it does not follow, as appellant seems to contend, that the court below was required to accept his testimony.

The principles of the Communist Party, to which appellant admittedly adhered, may have been such, that it was highly improbable, if not impossible, for appellant's testimony as to his beliefs to be true.

It is here unnecessary to discuss in detail all principles of the Communist Party, even if we were qualified to do so. It is sufficient here to point out wherein some of its principles are contrary to those expressed in our Constitution. The evidence consisted of testimony, and books, pamphlets and writings. There was substantial evidence which, if believed, leads to the conclusion that the Communist Party held and advocated: that private ownership of the agents of production was wrong; that the agents of production should be confiscated by the government without compensation to the private owners thereof; that the government should be a dictatorship of the proletariat; that the present government here should be abandoned and one like that of the Soviet Union established; that the Supreme Court and the Senate should be abolished; that the government should be controlled by one political party only, and all others should be suppressed; and that the various countries of the world should establish a world union of Soviet Socialist Republics. It is obvious that these views are not those of our Constitution.

As an example of the recognition by the Communist Party itself that its views are different from those expressed by our Constitution we quote the following from the program and constitution for

the years 1921 to 1924, of the Workers Party of America, now known as the Communist Party:

> "The experience of the workers in the struggle against capitalism has proven that the workers cannot take over the ready-made machinery of the Capitalist government and use this machinery to build up a Communist society. The form of organization of the existing government, constitutional basis, its laws, the bureaucracy, which has been built up over a century cannot be used by the workers. They are all of a character to aid the capitalists in the struggle against the workers and cannot be transformed into instruments of struggle of the workers against the capitalists."

In bringing these aims about, we find sharply conflicting views as to what method the Communist Party advocates. There is substantial evidence that the Communist Party expects to use and advocates overthrow of our government by force and violence. There is other evidence to support the view that such party neither contemplates nor advocates the use of force and violence in the overthrow of our government. In view of the direct conflict of evidence with respect to this question, we are unable to say that the finding of the trial court to the effect that the Communist Party advised, advocated and taught the overthrow of the Constitution and laws of the United States by force and violence, was clearly erroneous.

The trial court believed that appellant's testimony as to his support of our Constitution and allegiance to this country was incredible in view of his admission that he fully believed in and supported the principles of the Communist Party, and in view of the principles of such party. We cannot say that the trial court's conclusions are clearly erroneous in view of the substantial evidence in the record before us.

Appellant argues that the attempt to deprive him of his citizenship lawfully and properly conferred is unconstitutional and in violation of the first, fifth and fourteenth amendments. Such contention is based on the assumption that his citizenship was obtained "lawfully and properly". Such, we think, is not the case.

It is unnecessary to consider the remaining contentions of appellant relating to matters which are immaterial in view of our conclusions above stated.

Affirmed.

[Endorsed]: Opinion. Filed April 28, 1941. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9658

WILLIAM SCHNEIDERMAN, etc.,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUDGMENT

Upon appeal from the District Court of the United States for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Southern Division and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

[Endorsed]: Filed and entered April 28, 1941. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Mr. George R. Andersen, counsel for the appellant, and good cause therefor appearing, it is ordered that the issuance, under Rule 28, of the mandate of this Court in the above cause be, and hereby is stayed to and including July 27, 1941; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANCIS A. GARRECHT,
United States Circuit Judge.

Dated: San Francisco, California, May 16, 1941.

[Endorsed]: Filed May 16, 1941. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two volumes, consisting of nine hundred twenty (920) pages, numbered from and including 1 to and including 920, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 15th day of July, 1941.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration and decision of this application.

FILE COPY

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JUL 26

CHARLES ELMORE CROPLEY

537028

Supreme Court of the United States

OCTOBER TERM, 1941

No. ~~311~~ 2

WILLIAM SCHNEIDERMAN

Petitioner

against

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CAROL KING
Attorney for Petitioner

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Supreme Court of the United States

OCTOBER TERM, 1941

No. .

WILLIAM SCHNEIDERMAN

Petitioner

against

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Supreme Court of the United States:

Your petitioner, William Schneiderman, respectfully alleges:

A

Summary Statement of the Matter Involved

Petitioner came to this country in 1908 when he was three years old. He has lived here ever since. When he was twenty-one he was naturalized. Thirteen years later, in 1940, his naturalization was revoked because the Court found that it had been (a) fraudulently and illegally procured in that petitioner's oath that he would support the Constitution and that he renounced allegiance to foreign sovereignties was a false oath; (b) fraudulently procured

because petitioner concealed from the naturalization court that he was a member of the Communist Party; (c) illegally procured in that he was not, and had not within five years preceding the filing of his application, behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.

These findings were all based upon the Court's conclusions as to the tenets of the Communist Party and of petitioner's attachment to the tenets because of his membership in that party. The views that the Court attributed to the petitioner were not his views. The record discloses that different interpretations are held as to the tenets of the Communist Party. The Court selected one set of these interpretations and attributed them to petitioner, and because of this attribution found that petitioner must have held the views which petitioner has disavowed; and after imputing such views to petitioner the Court on the basis of his holding the views thus attributed to him his grant of citizenship should be cancelled.

The judgment of cancellation was handed down by the District Court of the United States for the Northern District of California, Southern Division; Michael J. Roche, Judge presiding, on July 23, 1940. The Ninth Circuit Court of Appeals affirmed the judgment on April 28, 1941. The mandate was stayed on May 16, 1941.

B

Jurisdiction

The judgment cancelling petitioner's citizenship was based upon the Act of June 29, 1906 (8 U. S. C. § 405). This Court's jurisdiction rests on § *240* (*a*) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. § 347).

C

Questions Presented and Reasons Relied on for the Allowance of the Writ

1. The statute, as construed by the courts below, permits the setting aside of the thirteen year old citizenship of one who has spent all but the three earliest years of his life in the United States because of the Courts' conclusion that petitioner must, in 1927, have held certain abstract political ideas the effect of which he misstated to or concealed from the naturalization court. Citizenship may be cancelled only for fraud or illegality. Neither fraud nor illegality can be predicated upon the imputation of political views to a person where the views are imputed solely because of his membership in a political party, as to the doctrines of which there are varying possible interpretations, especially where petitioner disavows the interpretations imputed to him by the Court.

2. The decision of the Court below—attributing to an individual political beliefs solely because of that person's membership in a political party, adjudging him guilty of false swearing and fraudulent misrepresentation because of such putative political beliefs, and cancelling his citizenship for the alleged fraud—creates a precedent which makes provisional the tenure and status of naturalized citizens, and subjects their citizenship to revocation years after the granting thereof because of attributed political beliefs. Such a rule is in conflict with the principles of construction that this Court has laid down in cases like the *Maxwell Land-Grant Case*, 121 U. S. 325, as construed in connection with *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 105.

3. The decision of the court below, in effect, amounts to the setting of standards for citizenship by the Court instead

of by Congress; and it actually establishes a rule of naturalization which Congress deliberately refused to enact.

4. When, in 1927, an applicant for citizenship has fully complied with the statutory requirements, has informed the naturalization court as to all the matters inquired of him, and the naturalization court in compliance with the statute thereupon grants citizenship, from which no appeal is taken by the Government, a court cannot in a cancellation proceeding in 1940 cancel citizenship by substituting its view as to the attachment of the applicant to the Constitution of the United States for that of the naturalization court.

5. Political beliefs and membership in a party (which is not proscribed by Congress) which were not inquired into by the court granting naturalization, cannot be the basis for a finding that the appellant was guilty of a false and fraudulent concealment and that his citizenship should be cancelled on the ground of fraud.

6. The decision of the Court deprives the petitioner of a valuable right. There is a complete absence of evidence that there was any imposition upon the naturalization court, for there was no evidence that petitioner held the abstract beliefs which the Court now holds he must have held and therefore must have misrepresented or concealed.

7. The findings—that petitioner's oath was false, that he fraudulently concealed his membership in the Communist Party, that he had not behaved as a person attached to the Constitution—are all based upon the assumption that petitioner held as political beliefs those which the Court attributed to him because of his membership in the Communist Party. There is no foundation in the evidence for these findings; and the Court in attributing to the petitioner the beliefs that it finds were misrepresented or con-

cealed from the naturalization court, did not make a judgment of fact, but imposed its own beliefs as to the Communist Party's tenets on petitioner. The Court in so deciding worked a forfeiture of petitioner's liberty and property without due process of law.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the Circuit Court of Appeals for the Ninth Circuit, commanding said court to certify and send to this Court a complete transcript of the record and all proceedings had in said Circuit Court of Appeals for the Ninth Circuit in the case therein entitled "United States of America against William Schneiderman, also known as Velvel Schneiderman"; and that said case may be reviewed and determined by this Court and the decision therein finally revised; and that your petitioner may have such other and further relief in the premises as to this honorable Court may seem appropriate.

Respectfully submitted

WILLIAM SCHNEIDERMAN
By CAROL KING
Attorney

Dated: July 26, 1941

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of the Court Below

The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported at 119 F. 2d 500. It appears in the record at page 908. The opinion of the District Court is reported in 33 F. Supp. 510.

II

Jurisdiction

1. The statutory provision is Jud. Code § 240(a) (28 U. S. C. § 347) as amended by the Act of February 13, 1925, 43 Stat. 938.

2. The date of the order for mandate was April 28, 1941.

III

Abstract of the Case

Petitioner came to this country a child of three (R. 74). At eighteen he declared his intention to become a citizen (R 72). His petition for naturalization was filed shortly after his twenty-first birthday (R. 78) and granted a few months later (R. 79). Twelve years after the granting of citizenship the Government brought these proceedings to cancel the citizenship of petitioner, who had then lived thirty-one of the thirty-three years of his life in this country (R. 10).

The Statute

The proceeding was brought under the Act of June 29, 1906, 8 U. S. C. § 405, which provides for instituting proceedings "for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured."

The Findings

Cancellation was decreed because the Court, in 1940, inferred from petitioner's membership in the Communist Party and the Court's construction of the tenets of that party, that he had, in 1927, misrepresented or concealed his political ideas in the naturalization proceeding. It accordingly found that his certificate of naturalization (a) was fraudulently and illegally procured in 1927 in that petitioner's oath that he would support the Constitution and that he renounced allegiance to foreign sovereignties, was a false oath (Seventh Finding, R. 51); (b) was fraudulently procured because petitioner concealed from the naturalization court that he was a member of the Communist Party (Sixth Finding, R. 50); (c) was illegally procured in that he was not, and had not within five years preceding the filing of his application behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same (Fourth Finding, R. 48).

The Court specifically found in these three findings (Fourth, Sixth, and Seventh) that the party to which petitioner belonged, was opposed to the principles of the Constitution of the United States and advised, advocated, and taught the overthrow of the government of the United States by force and violence; in two of the findings—the concealment finding (Sixth) and the behavior finding

(Fourth)—it added that the Communist Party taught "disbelief in, and opposition to, organized government" (R. 49, 51).

The Evidence

Petitioner had all the jurisdictional qualifications for citizenship. The findings rested solely on his imputed holding of certain abstract political beliefs. These beliefs were not attributed to him because of anything that he said, wrote, or did, they were deduced solely from the fact that the petitioner was a member of and had participated in the activities of the Communist Party and its predecessors, and from the Court's interpretation of the tenets of the Communist Party. Except for the inferences drawn from petitioner's membership and the Court's selection of one set of interpretations of the doctrine rather than another, there is no evidence that petitioner held or advocated any of the doctrines now attributed to him by the Court. On the contrary, petitioner swore that he was attached to the Constitution (R. 896); that he would fight for this country against all other lands including the land of his birth (R. 886-7). Apart from the ideas that are imputed to him there is nothing to show that he did not have a deep concern for the country of his adoption or that he lacked attachment to the Constitution or that he believed in, or that he thought that the Communist Party advocated, the overthrow of the Government by force and violence. The affirmative evidence is all the other way (R. 362, 373). He did wish to see change and improvement in social conditions (R. 862, 898) and thought and hoped that they might be accomplished by representative and peaceful processes (R. 867-8, 897-8). Membership in the Communist Party, he believed, was not incompatible with the obligations of American citizenship (R. 395).[1] To

[1] "Nothing in our Constitution or our laws forbids the formation of such a party (the Communist Party), or persons from joining them." *Strecker v. Kessler*, 95 F. 2d 976, 978.

the contrary, he believed that "our program, principles and tactics, our theory and practice, are perfectly consistent with the obligations and rights of American citizenship" (R. 359). Petitioner gave a reasoned statement of these things (R. 362, et seq.). He adduced in support of those views statements of authorities who he contended interpreted Communist doctrine the way he did (R. 397, et seq.).

The evidence established that petitioner had lived a thoroughly reputable life (R. 357); had never been convicted of any crime (R. 360) or been in any conflict with the criminal authorities (R. 360). There was no suggestion that he had advocated or was guilty of any sabotage or any subversive activities.

The Court discarded petitioner's assertions of his opinions and beliefs and disregarded the writings and statements of authorities on party doctrine that he adduced in support of his beliefs. The Court then attributed to him the interpretation that it chose from the admittedly differing interpretations of the Communist Party doctrine, and because of the point of view thus attributed to petitioner the Court concluded that he was guilty of fraud, false swearing, and concealment in not declaring the attributed beliefs as his own to the naturalization court.

IV

Errors relied on and summary of arguments specified as grounds of appeal.

The grave dangers to naturalized and native citizens alike in the decision appealed from, require review by certiorari.

1. The judgment below has forfeited petitioner's thirteen year old citizenship upon the Court's attribution

to the petitioner of political opinion which it imputes to him, not because of anything that he has said or done, but solely on the Court's choice of one rather than another set of interpretations of Communist Party doctrine. In effect, the Court has ruled that the naturalization of a citizen may be revoked solely because of membership in the Communist Party, thus laying down a rule of naturalization which is not only beyond its powers but is one that Congress deliberately refused to establish.

The judgment below, instead of resting upon proof of the fraudulent misstatement by petitioner of his political beliefs, to the naturalization court, substitutes the original point of view of the court sitting in a cancellation proceeding and does this solely by attributing to petitioner the Court's version of the political tenets of the Communist Party.

The doctrines implicit in the decision below, that the tenure and status of a naturalized citizen are provisional and that they may be cancelled by attributing to him, years after the event, a frame of mind deduced from the tenets of a political party (which is not proscribed) flout our American traditions, and are gravely menacing to the hosts of naturalized citizens.

2. The finding that petitioner took a false oath has no support in the record. But the conclusion that a constitutional oath may be found to be false years after it was taken, on the ground that it was inconsistent with abstract beliefs that may later be attributed to an affiant by persons who disagree with him, is dangerous to all citizens, native and naturalized alike, who may have taken a constitutional oath.

3. The holding that there was a concealment because petitioner did not disclose his membership in the Communist Party concerning which he was not questioned and which he could not have believed to be material, contravenes the rules of law that may hereafter be obtained relat-

ing to the cancellation of grants because of fraud or misrepresentation.

4. The finding that petitioner, a man of irreproachable life, may have his life-long citizenship cancelled on the ground that his behavior shows lack of attachment to the principles of the Constitution, rests upon no support except the views attributed to him in the revocation court.

The doctrine of the court below permits the uprooting of a man and his family without any limitation of time, and without any proof of fraud or illegality, except such as may be imputed to him from the holding of beliefs and the appraisal of such beliefs as un-American.

These questions were all raised in the court below in the specified grounds of appeal (R. 57, 58).

POINTS

FIRST

The judgment of the Court has set aside petitioner's thirteen year old citizenship upon the Court's attribution to the petitioner of political opinions. It imputes these opinions not because of anything that petitioner has said or done, but solely on the Court's choice of one rather than another set of interpretations of Communist Party doctrine. In effect, the Court has ruled that the naturalization of citizens may be cancelled because of membership in the Communist Party, thus laying down a rule of naturalization which is not only beyond its powers but is one which Congress deliberately refused to enact.

This is not an original naturalization proceeding. Before a naturalization court the alien must show to the satisfaction of the court "that he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States and well-disposed to the good order and happiness of the same" (Act of June 29, 1906; 8 U. S. C. 382). In a naturalization court the bi-

ness of the applicant is tested against the climate of opinion then in existence. If the Government is not satisfied with the discretion then exercised by the naturalization court it may appeal.

But when the jurisdictional requirements of naturalization have been met and citizenship has been granted and, years later, it is sought to annul that grant on the ground that beliefs were misrepresented years before, the issues presented are very different. Then the statutory provisions—read in the light of the doctrines safeguarding vested rights and freedom of belief—require proof that the citizen fraudulently misstated or fraudulently concealed his beliefs. There is no foundation in the record to charge the petitioner with holding the beliefs found to exist—much less their fraudulent misstatement: for there is affirmative evidence that they were not his beliefs; and all that is shown to the contrary is that he was a member of a party whose tenets were subject to varying interpretations and the court selected one version of those tenets rather than another and attributed to the petitioner the version so selected.[2]

The opportunities that such a doctrine afford to proscribe for political views a person whose activities subsequent to his naturalization may find disfavor, require an emphatic and definitive rejection of the decision below.

1. There is no rule of law making membership in the Communist Party, as such, ground for deportation or ex-

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[2]The Circuit Court of Appeals stated that the principles of the Communist Party, to which appellant admittedly adhered, *may* have been such that it was *highly improbable, if not impossible,* for appellant's testimony as to his beliefs to be true (R. 916).

> "* * * In bringing these aims about we find sharply conflicting views as to what method the Communist Party advocates. There is substantial evidence that the Communist Party expects to use and advocates overthrow of our government by force and violence. There is other evidence to support the view that such party neither contemplates nor advocates the use of force and violence in the overthrow of our government * * *" (R. 917).

clusion from citizenship. On the contrary, bills to accomplish this were introduced in Congress but they were not enacted.[3] But the principle that Congress rejected has, in effect, been applied and extended by the Court below. Applied, in that the Court has decreed that a man is not entitled to citizenship because of conclusions deduced solely from his membership in the Communist Party. Extended, in that the decision below goes far beyond exclusion of an alien: it holds that a man's vested rights of citizenship may be divested, and his life—which was entirely (except for a few years of infancy) lived in this country—uprooted, because of inferences which the Court has drawn from his membership in a political party.

2. If a judgment granting one of the most precious of human rights[4] is to be set aside this can be done only on evidence clear, compelling, and convincing; it may not rest upon the assumption that petitioner's interpretations of party doctrine should have been the same as that of the Court.

(a) In an ordinary commercial case to set aside a grant, fraud must be proved by evidence clear, unequivocal and convincing. (*Maxwell Land-Grant Case*, 121 U. S. 325, 381).[5] If that is the principle governing the setting

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[3]H. R. 12044 (72d Cong., 1st sess.) passed House; reported by Senate Committee on Immigration on June 11, 1932. H. R. 7120 (74th Cong., 1st sess.) reported out of the House Committee on Immigration and Naturalization on May 27, 1935. Nothing further happened to either bill.

[4]The award of citizenship is a judgment. (*Tutun* v. *United States*, 270 U. S. 568, 577.) To deport one who claims to be a citizen deprives him of liberty and may result also in loss of both property and life, and of all that makes life worth living. (Mr. Justice Brandeis in *Ng Fung Ho* v. *White*, 259 U. S. 276, 284.)

[5]Recent assertions of the rule are found in *Fidelity & Casualty Co.* v. *Genova*, 90 F. 2d 874, 876; *Marshall* v. *Gelfand*, 99 F. 2d 85, 86.

The principle has been applied to proceedings to cancel citizenship: "It must be borne in mind that these proceedings are to annul a solemn judicial

(*Footnote continued on next page*)

aside of ordinary commercial transactions, then said Mr. Justice Miller, "how much more should it be observed where the attempt is to annul the grants * * * of the United States" (*Maxwell Land-Grant Case, supra,* at 381). And when the grant that is sought to be annuled is a grant of citizenship and it is sought to be annulled, not on the basis of proof of objective facts but of political beliefs—especially beliefs not proscribed by Congress,—a qualitatively different standard applies.[6] For neither fraud nor illegality—the sole basis of a revocation proceeding—can be predicated upon the representation of abstract political beliefs,—particularly beliefs attributed to a person in spite of his disavowals in a case where there are varying interpretations of the party doctrines.

(b) For when proceedings are brought to deprive a person of liberty or property because of the false state-

(*Footnote continued from previous page.*)

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grant by the United States to defendant, and 'nothing will warrant cancellation of his grant of citizenship but clear, unequivocal, and convincing evidence, that in quantity and quality inspires confidence and produces conviction of the truth of the charge, virtually beyond reasonable doubt.' *U. S.* v. *Sharrock* (D. C.), 276 Fed. 30, 32 * * *" *United States* v. *Knight,* 291 F. 129, 134.

"Under existing law [where] an applicant for citizenship" complies with the requirements and receives a certificate of citizenship, "his citizenship cannot be cancelled or taken away from him, unless the Government is able to prove beyond a reasonable doubt that at the time he took the oath of allegiance he did not believe in this form of Government and in fact had a mental reservation." *Report of the Committee on Immigration and Naturalization on H. R. 9690,* 75th Congress, 3d sess. (1938) proposing changes in the law to obviate such restrictions.

[6]"This so-called statement of fact—which is alleged to be false—is merely a conclusion or a deduction from facts. True it is the kind of conclusion which courts call a conclusion of fact, as distinguished from a conclusion of law; and which is sometimes spoken of as a finding of ultimate fact as distinguished from an evidentiary fact. But, in its essence it is the expression of a judgment—like the statements of many so-called historical facts. To such conclusions and deductions the declaration of this court in *American School of Magnetic Healing* v. *McAnnulty,* 187 U. S. 94, 104, is applicable." Dissenting opinion of Brandeis and Holmes, JJ., in *Pierce* v. *United States,* 252 U. S. 239, 266, 267. (See reference to *American School of Magnetic Healing* v. *McAnnulty, infra,* footnote 7.)

ment of his beliefs or opinions (*American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94, 105, 106),[7] more especially because of his political opinions (*Pierce* v. *United States*, 252 U. S. 239, dissenting opinion of Brandeis and Holmes, JJ., 268, 269),[8] the courts recognize that political beliefs are not like allegations of fact or even like opinions as to the quality of cloth or the tensile strength of steel, for political beliefs are complicated matters and the denial of the right to think as one pleases not lightly to be imposed. The nature of these beliefs is such that they may not be imputed when the result of the imputation is to deprive a man of liberty or property, by attributing to him, against affirmative evidence to the contrary, one rather than another, version of the tenets of a political party.

(c) Even where political beliefs can be established beyond any possible doubt, it is contrary to our institutions to penalize a man for the mere holding of such beliefs.[9]

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[7] "Vaccination is believed by many to be a preventive of smallpox, while others regard it as unavailing for that purpose. Under these statutes could the Postmaster General, upon evidence satisfactory to him, decide that it was not a preventive, and exclude from the mails all letters to one who practiced it and advertised it as a method of prevention, on the ground that the moneys he received through the mails were procured by false pretenses", Peckham, J., in *American School of Magnetic Healing* v. *McAnnulty*, *supra*, at 106. "* * * There are, as the bill herein shows, many believers in the truth of the claims set forth by complainants, and it is not possible to determine as a fact that those claims are so far unfounded as to justify a determination that those who maintain them and practice upon that basis obtain their money by false pretenses within the meaning of these statutes. The opinions entertained cannot, like allegations of fact, be proved to be false * * *" Same, at 107.

[8] "All the alleged false statements were an interpretation and discussion of public facts of public interest. * * * even the President's address, which set forth high moral grounds justifying our entry into the war, may not be accepted as establishing beyond a reasonable doubt that a statement ascribing a base motive was criminally false." *Pierce* v. *United States*, *supra*, at 269.

[9] "It is of the essence of the institutions of liberty that it be recognized that guilt is personal and cannot be attributed to the holding of opinion or to mere intent in the absence of overt acts." Memorial of Charles E. Hughes and others to the New York Assembly, January 21, 1920, in the case of the expulsion of assemblymen for membership in the Socialist Party.

Moreover even in cases where an individual *has admitted* the holding of beliefs, caution must be observed in imputing those beliefs as of an earlier date. For not only are different questions presented to a court sitting in a cancellation proceeding than in a naturalization proceeding, but the climate of opinion may change radically from one period to another[10] and beliefs calling for social or political changes that might be dismissed as negligible at one period might be viewed with great concern in another.[11] Accordingly, even when a court is dealing with *admitted* beliefs it should be reluctant when important rights are at stake to substitute its views as to the significance of those beliefs in the total picture when the question comes up years afterwards. (Compare *Rowoldt v. Perfetto*, 355 U. S. 115, 116.)

(11) The situation is considerably different when a court attempts to attribute to a man beliefs which he denies. For where a court selects one of several possible interpretations of doctrine—theological, poetic, or political—and then attributes its selection to a person who may not

[10] The increasing trend in opinion in the United States is shown in *Schneiderman v. United States*, 320 U. S. 118, 136. Since the *Schneiderman* case in 1943 immigration under the Second War Powers Act of October 6, 1942 as amended by the Act of June 28, 1944, 58 Stat. 746, 8 U. S. C. Supp. IV, 203 (b), 54 Stat. 673, 8 U. S. C. 203 (a) (27), and the Displaced Persons Act of June 25, 1948, 62 Stat. 1009, as amended by the Act of June 16, 1950, 64 Stat. 219, 50 U. S. C. App. Supp. 1951, 1951 (b) (1), have admitted into the country hundreds of thousands of persons who, according to the Government's own contentions, would have been excluded under the standards of the *Schneiderman* case. See Report of the Commissioner General of Immigration, Annual Report of the Immigration and Naturalization Service, 1951, pp. 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44,

well, as he insists, have chosen a different interpretation, the court is not making a judgment of fact, it is imposing its own belief. The case is particularly glaring when a court does this in so complex a matter as political doctrine.

For "there is no sure test of what a party does advocate. The utterances of a leader may represent only his personal view and be rejected by his associates. Even platforms have never been taken very seriously in any party." (Chafee on "Freedom of Speech" [1920] 261.)" To assign to a citizen one of the admittedly varying interpretations of party doctrine is, in the language of Holmes, C. J., "mere fating." (Schaefer v. Keesler, 75 F. 2d 975, 978.) To penalize him for holding the views so attributed is a clear deprivation of due process.

2. Yet as the evidence discloses, that is what was done in this case. The [illegible] [illegible] [illegible]

believed, leads to the conclusion that the Communist Party held and advocated that private ownership of the agents of production was wrong; that the agents of production should be confiscated by the government without compensation to the private owners thereof; that the government should be a dictatorship of the proletariat; that the present government here should be abandoned and one like that of the Soviet Union established; that the Supreme Court and the Senate should be abolished; that the government should be controlled by one political party only, and all others should be suppressed; and that the various countries of the world should establish a world union of Soviet Socialist Republics. It is obvious that these views are not those of our Constitution."

These views it deduced from the testimony of two ex-Communists and from certain books, pamphlets, and writings as to the tenets of the Communist Party. They were by no means, except by attribution from his membership, the views held by the petitioner. He believed in the ultimate social ownership of the means of production (R. 862). He stated that under certain circumstances if means of production were taken over there would have to be compensation (R. 878). He believed, and quoted authority for the view that "dictatorship of the proletariat" meant: "not a form of government but a state of things"; that when working men came to be in the majority they would influence the state more than monopoly capitalists would (R. 864). He believed there should be changes in the framework of the Government as a long range process (R. 898). He did not believe that national boundaries would ever disappear completely (R. 895). He did believe in the solidarity of labor throughout the world and cited Lincoln's statement in accord.[15] In support of his views

[15] "The strongest bond of human sympathy, outside of the family relation, should be one uniting all working people, of all nations, and tongues, and kindreds."—"Complete Works of Abraham Lincoln", Gettysburg Edition, Reply to New York Working Men's Association, March 21, 1864, Volume X, page 53 (R. 432).

he called attention to publications and statements of party leaders (R. 433, et seq.).

The Court characterizes the views quoted on the preceding page, which it selected as being the views of the Party, as "not those of our Constitution". But Americans whose patriotism the Court would not have questioned do not agree with the Court that the holding of the views quoted is un-American.[16]

Thus, Congressman Dies, reporting for the Committee on Immigration and Naturalization (H. R. No. 1353, 72d Congress, 1st sess. upon H. R. No. 12044) said: "The Committee has made it plain that the proposed bill will not affect any alien who merely subscribes to a doctrine which advocates a system based upon common ownership of property or abolition of private property unless such alien believes in, advises, or advocates the establishment of this system by force or violence."

Judge Tuttle could not "follow the government in its contention that belief by an alien that changes should be made in the form of our government indicates lack of attachment to the principles of our Constitution." (*United States* v. *Rovin*, 12 F. 2d 942, 944-945.)

"I am unable to assent to the suggestion in the opinion of the court that assembling with a political party, formed to advocate the desirability of a proletarian revolution by mass action at some date necessarily far in the future, is not a right within the protection of the Fourteenth Amendment." (Mr. Justice Brandeis in the concurring opinion of *Whitney* v. *California*, 274 U. S. 357, 379.)

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[16]What is "un-American" is itself subject to a great differences of opinion. Thus the following organizations have been listed as "un-American" by Congressman Thorkelson of Montana: The Survey Associates; the American Civil Liberties Union; the cooperative movement; the Committee for Industrial Organization; The Washington Friends of Spanish Democracy, with Leon Henderson, president, and William Leiserson and Rev. Kenneth Lyons; the Brookings Institution.

> "These are some of the groups that are connected with the so-called pink, red, and scarlet activities. Some of the Members of this House are also connected with some of these organizations * * *" (84 Cong. Record, 76th Congress, 1st Sess., p. 10384 [July 28, 1939]).

(b) The fact that the courts below differed from the views of Justice Brandeis, Judge Tuttle and Congressman Dies, does not show that either group was necessarily in error, but that there were certain possible differences of opinion. It does, however, make it unmistakable that petitioner's avowal, in 1927, of attachment to the principles of the Constitution cannot now be adjudicated to have been false.

(c) So far as belief in force and violence as a method of bringing about change is concerned, the question is not what the party tenet was—if there could be said to be absolutes as of any particular time—the question is whether the Government proved that petitioner had a different frame of mind in 1927 and misstated that frame of mind to the naturalization court. There was a complete failure of proof, for all that the record establishes is that different people had different ideas as to whether the Communist Party did or did not believe in the overthrow of the government of the United States by force and violence.

The court below found the views on this point "sharply conflicting" (R. 917). The District Court noted the divergence of courts on this point (R. 41). The conflict has been noted by other courts and commentators. Some courts have believed that judicial notice may be taken as to the attitude of the Party.[17] Others believe that it may not.[18] Some courts have believed that the Party doctrine did not involve a belief in force and violence.[19] Certiorari was sought in *Strecker* v. *Kessler* (*supra*, p. 8) because of

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[17] *United States ex rel. Vakinen* v. *Commissioner of Immigration*, 57 F. 2d 707 (C. C. A. 2d, 1932), cert. denied, 287 U. S. 607 (1932); *Ex parte Jurgans*, 17 F. 2d 507 (D. Minn. 1927), aff'd *Jurgans* v. *Seaman*, 25 F. 2d 35 (C. C. A. 8th, 1928); *Kjar* v. *Doak*, 61 F. 2d 566, 569 (C. C. A. 7th, 1932).

[18] *Ex parte Fierstein*, 41 F. 2d 53 (C. C. A. 9th, 1930); *Strecker* v. *Kessler*, *supra*, at 978.

[19] *Colyer* v. *Skeffington*, 265 F. 17, 61 (D. Mass., 1920), reversed on other grounds, *Skeffington* v. *Katzeff*, 277 F. 129 (C. C. A. 1st, 1922); *The King* v. *Hush; Ex parte Devanny* [1932], 48 C. L. R. 487, 516-518 (opinion of Mr. Justice Evatt of the High Court of Australia).

the differing attitudes of the courts.[20] Commentators totally unconnected with this case have expressed the view that the Communist Party does not support the doctrine of force and violence, among them, the two university professors whose testimony was read into the record on behalf of the petitioner (R. 477, 695).[21]

It is not to be admitted that hosts of naturalized citizens are to be placed in the kind of jeopardy which the decision appealed from would occasion. Our notions of freedom of speech and belief and of the security of tenure and status against unwarranted attacks preclude that the inestimable privileges of American citizenship should be held to the "hazard of successful resistance" of those who for motives of their own may, years later, when the entire perspective of opinion may have changed, bring about the destruction of a man's citizenship by substituting for beliefs which he avows beliefs that are selected for and attributed to him.

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[20]The Government's Petition for a Writ of Certiorari in the *Kessler* v. *Strecker* case states (p. 12):

> "The question whether membership by an alien in the Communist Party of America, together with the resulting affiliation with the Communist International, subjects an alien to deportation, was answered by the court below in the negative; as will be shown, other courts have given an affirmative answer. Moreover, the court below regarded the record as lacking in evidence to support a finding that these organizations, at the time of respondent's membership in 1932-1933, advocated or believed in the overthrow of the Government of the United States by force and violence; other courts have sustained orders of deportation on records containing essentially similar evidence."

[21]"Every party has such men [who would use force to ged rid of an opponent] * * *. The Republican Secretary of the State of Massachusetts would shoot Bolshevists and traitors every morning, at least in war time. * * * But such men do not turn their party into a party of force and violence." Chafee, *Freedom of Speech* (1920), pp. 260, 261. Edward C. Cheyney, prof. Emeritus, European History, Univ. of Pa., *American Academy of Political and Social Science, Annals*, Vol. 200, pp. 1-12 (Nov., 1938): "Merely to charge them [Communists] with planning to bring about a change in the Government of the United States 'by force and violence', a doubtful and frequently denied charge at best, is to surrender the traditional American way of argument to a propaganda of shadowy fear." See also: *Encyc. Brit.*, 12th ed. (1922), Vol. 30, p. 732; Harry F. Ward, *Democracy and Social Change*, Modern Age Books, Inc. (1940), p. 144.

SECOND

The finding that petitioner's naturalization oath was false is without support in the evidence.

Petitioner swore to support the Constitution and to renounce allegiance to any foreign prince, potentate, state, or sovereignty, and to support and defend the Constitution against all enemies, foreign and domestic. The oath was false, the Court found (R. 51), because he did not intend to renounce his allegiance, but on the contrary, to maintain allegiance to the Union of Soviet Socialist Republics and to the Third International; he did not intend to support the Constitution but intended to support the teachings of the Third International, which the court found are opposed to the principles of the Constitution and advocated the overthrow of the government and laws of the United States by force and violence (R. 51, 52).

1. The conclusion that petitioner did not intend to support the Constitution, but on the contrary, intended to maintain allegiance to the Union of Soviet Socialist Republics and to the Third International, overlooks the essential facts. Petitioner was a boy of three when he left Russia (R. 74, 75). When he became a citizen at the age of twenty-one he had lived all of his years of understanding in the United States (R. 75). Petitioner swore in the naturalization court that he was attached to the Constitution (R. 75); he testified in the court below that he would fight for this country even in a quarrel with Russia (R. 886, 887).

2. The alleged falsity of the petitioner's oath because of his holding of views that are opposed to the Constitution has already been discussed. But a word may be added concerning the dangers that this decision holds not only for naturalized but for native citizens. Millions of

Americans take the Constitutional oath—lawyers, notaries public, civil servants. A youth fresh from the university (as was the petitioner [R. 357]) may even have *expressed* abstract beliefs calling for the change of existing American institutions.[22]

If the doctrine of this case is permitted to stand, a person's professional status or position may be infused with insecurity, subject to a potential adjudication that years before he took a false oath. The oath may be held false because views were expressed of political beliefs which some displeased official has later concluded are inconsistent with a pledge to support the Constitution. Or what is infinitely worse, upon the doctrine of this case, the views need not be expressed at all—falsity may be attributed from association with a party and from a selection of interpretations of party doctrine that do not represent the views of the affiant.

THIRD

The finding that there was a fraudulent concealment at the time of naturalization of petitioner's membership in the Communist Party is without support in the evidence.

The Court has found (R. 50) that the "decree and certificate of naturalization were fraudulently procured and obtained" in that respondent concealed from the naturalization court that he was a member of the Communist Party. The finding continues (R. 50) that the naturalization court was deceived in that the principles of the Communist Party are opposed to the principles of the Constitution, and advised, advocated and taught (a) the overthrow of the government, Constitution, and laws of the United States by force and violence; and (b) taught disbelief in, and opposition to, organized government.

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[22]See statement of Mr. Justice Brandeis in the *Whitney* case, *supra*, p. 19.

1. There was no concealment.

The form of the petition is prescribed by statute (8 U. S. C. § 409). The petition in this case follows the official form (R. 74). Paragraph "Eighth" of this form reads as follows: "I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist, or a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to—, of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States."

The official form required the negativing only of polygamy or membership in any organization teaching disbelief in organized government, which the Department of Labor seemed to construe as meaning any anarchist organization.[3]

The naturalization laws and the regulations of the Department of Labor then in force were contained in a pamphlet entitled "Naturalization Laws and Regulations, June 15, 1924." Petitioner may have read this pamphlet from cover to cover without finding any reference to the Communist Party, or any interest on the part of the

[3] [illegible]

court in Communism, or in any association with a party that believed in the overthrow by force or violence of the government of the United States, or all forms of law. There was not then, as there is now, a provision preventing the naturalization of a person "who believes in, advises, advocates or teaches, or who is a member of or affiliated with an organization, association, society, or group that believes in, advises, advocates or teaches * * * the overthrow by force or violence of the Government of the United States or of all forms of law." That was added by the Act of October 14, 1940, 8 U. S. C. § 705.

2. There was no fraud.

If, despite the apparent lack of interest of the Government at that time, any basis can be made for asserting that the petitioner should have written this information into a form that contained no provision for it, or should somehow have managed to get this information before the court, though there was no indication that the court asked any question about it,—there is not the slightest evidence to prove that his failure to do so was wilful or fraudulent. He had no reason to believe that the court was interested in the Communist Party, or in any party other than one standing for the anarchistic idea of opposition to all organized government.

In this finding on concealment (R. 50), though not in the finding of the false oath, the court includes the statement that the Communist Party "taught disbelief in and opposition to organized government" (R. 51). The Government's attorney at one time went so far as to state that an issue in the case is "whether * * * the petitioner was a disbeliever in organized government" (R. 149), but there is not a modicum of evidence to support this view. Petitioner testified to the contrary (R. 363). Petitioner's position is confirmed by the report of the Congressional Committee in seeking to obtain additional legislation

against the Communist Party, for the very reason that the Communist Party was not opposed to organized government.[24]

Nor was the situation changed so far as petitioner was concerned by the fact that there was in effect in 1927 the Act of October 16, 1918 as amended by the Act of June 5, 1920 (8 U. S. C. § 137).[25] For if petitioner knew about these statutes—they were not included in the pamphlet on naturalization published by the Labor Department—he had no reason to suppose they applied to him. For they were deportation and exclusion statutes; he had lived here practically all his life. They referred to organizations believing in force and violence; he did not so construe the tenets of the Communist Party.

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[24]Report No. 1023 by Mr. Starnes for the Committee on Immigration and Naturalization, to accompany H. R. No. 7120, 74th Congress, 1st sess., May 27, 1935, states:

> "The acts above cited, of 1918 and 1920 centered around the anarchist idea of 'opposition to all organized government'. On that basis alone Communist or Fascist aliens differ in that while they may be imbued with 'opposition to non-Communist governments or opposed to non-Fascist governments' they are not 'opposed to all organized government.' This decided differentiation of the subversive activities dominating 'anarchists, Communists, and Fascists' renders necessary the enactment by Congress of a bill of this character in order to enable our Immigration and Naturalization Service to have a statute to guide them in handling the cases of Communists and Fascists."

[25]Under these Acts (referred to in the preceding footnote) aliens were to be *excluded* from admission into the United States and provision was made for their *deportation* if, among other things, they were "affiliated with any organization, association, society or group that believes in, advises, advocates or teaches (1) the overthrow by force or violence of the Government of the United States or of all forms of law. * * *"

FOURTH

The finding that petitioner did not behave as a person attached to the principles of the Constitution and well disposed to the good order and happiness of the United States cannot be supported.

The court found (R. 49) that petitioner "had not behaved as a man attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same"; but was a member of the Communist Party, the principles of which were opposed to the principles of the Constitution; and advised, advocated and taught the overthrow of the government, the Constitution and laws of the United States by force and violence; taught disbelief in and opposition to organized government (R. 49).

We have referred (*supra*, p. 9) to petitioner's impeccable life and behavior. The evidence which the Government believes sustains this finding may be stated in the language of the Government's brief in the Circuit Court of Appeals (pp. 18-19). "Appellant's admitted advocacy of the Communist's tenets and objectives and his active participation in the activities of the Communist organizations was clearly conduct inconsistent with that of a person attached to our form of government."

We submit that the argument cannot be sustained.

1. Membership in the Communist Party is not a basis for exclusion or deportation, and is relevant in these proceedings only as a ground for imputing certain abstract ideas to petitioner. But the possession of abstract political

ideas, without external acts, cannot be said to come within the comprehension of the word "*behavior*".[26]

2. But if the holding or even the advocacy of abstract ideas can be held to constitute "behavior", certainly the holding of abstract ideas—calling for a long range program of change—ideas that are not proscribed by any definite statute, that do not constitute an incitement to action, that do not advocate the overthrow of the government by force or violence: cannot in and of itself constitute "behavior" within the meaning of the naturalization statute. It is not to be assumed that young men attending a university, as petitioner was at the time he applied for citizenship (R. 359), will be free from the ferment of ideas. Nor that they will escape the belief that certain changes in our economic, political and social set-up would be desirable. But a man may be concerned about the United States—may be devoted to his country and still firmly believe that there must be change. And no one can say that such a position, without more, indicates a lack of attachment to the principles of the Constitution. *United States* v. *Rorin*, 12 F. 2d 942, at 944-5; dissenting opinion of Holmes, J., in *United States* v. *Schwimmer*, 279 U. S. 644, 654-655[27] and see *supra*, page 19.

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[26]"Behavior" is defined by the Oxford Dictionary (Murray Ed., Vol. I, Part II, p. 772) as the "manner of conducting oneself in the external relations of life: demeanor, deportment, bearing, manners" The Century Dictionary (1911 Ed., p. 508), in discriminating "behavior" from "conduct", states: "*Behavior* is the most general expression of one's mode of acting: it also refers particularly to comparatively conspicuous actions and conduct. *Conduct* is more applicable to actions viewed as connected into a course of life, especially to actions considered with reference to morality."

[27]"Some of her answers might excite popular prejudice, but if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate. I think that we should adhere to that principle with regard to admission into, as well as to life within this country. * * * Surely it cannot show lack of attachment to the principles of the Constitution that she thinks that it can be improved. I suppose that most intelligent people think that it might be."

3. If "behavior" indicating a lack of attachment to the Constitution can be predicated merely upon the holding of ideas approving social and political change, certainly such ideas must be proved by what the man himself has said or done or advocated, or by other irrefutable evidence. They may not be imputed solely on his connection with an organization and an interpretation of the tenets of that organization gathered from various writings, for not all men believe alike as to the doctrines of a political party, even when those doctrines have been condensed into a party platform.

4. Even if in the naturalization court purely abstract ideas could be considered as "behavior" and doubts as to their American quality could exclude a man of blameless life from American citizenship, such "behavior" cannot constitute a cause for revocation in the absence of a showing that the nature and qualities of those beliefs have been misrepresented to the court and that, as we have seen, has not been shown here.

CONCLUSION.

The dangers in the doctrine, implicit in the decision below—the jeopardy to naturalized citizens whose lives may be uprooted by imputed ideologies; the hazard to citizens, native and naturalized alike, whose constitutional oaths may later be called into question by persons who may impute to them ideas differing from those of the majority—make it imperative that the decision below be examined by this Court.

This Court in the exercise of its supervisory power should grant a writ of certiorari to review and revise the decision of the Circuit Court of Appeals for the Ninth Circuit.

Respectfully submitted

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July 26, 1941

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. ~~311~~. 2

WILLIAM SCHNEIDERMAN,
Petitioner,

against

UNITED STATES OF AMERICA.

BRIEF FOR PETITIONER.

WENDELL L. WILLKIE,
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To be argued by
WENDELL L. WILLKIE.

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OCTOBER TERM, 1941.

WILLIAM SCHNEIDERMAN,
Petitioner,

against

UNITED STATES OF AMERICA.

BRIEF FOR PETITIONER.

On certiorari to the Circuit Court of Appeals for the Ninth Circuit to review the decision of that court on April 28, 1941 (R. 907, 919) affirming a decree of the District Court for the Northern District of California, Southern Division, entered on the 23rd day of July, 1940 (R. 54-56) vacating a decree of naturalization of the petitioner entered June 10, 1927 (R. 79).

I.

Opinions Below.

The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported in 119 Fed. (2d) 500 (R. 908); the opinion of the District Court in 33 Fed. Supp. 510 (R. 39).

II.

Jurisdiction.

1. The statutory provision is Judicial Code, Section 240 (a), 28 U. S. C., Sec. 347, as amended by the Act of February 13, 1925, Chap. 229, Sec. 1, 43 Stat. 938.

2. The petition for certiorari was filed July 26, 1941 and granted October 13, 1941 (R. 922).

III.

Statement.

Petitioner came to this country in 1908, a child of three (R. 74). At eighteen, he declared his intention to become a citizen (R. 72, 358). His petition for naturalization was filed shortly after his twenty-first birthday (R. 78), and granted a few months later (R. 78, 79). For ten years preceding naturalization, he lived in poverty-stricken circumstances, had to go to work at the age of twelve as a newsboy (R. 357), and worked his way through high school and two and a half years of college study (R. 357-8).

Twelve years after citizenship was granted, the Government, pursuant to the provisions of the Act of June 29, 1906, Chap. 3592, Sec. 15, as amended, (8 U. S. C. Sec. 405), brought this proceeding against the petitioner, who had then lived *thirty years of his life in this country as a law abiding citizen,* who had never been arrested or censured by any law enforcement agency prior to or at the time of his naturalization (R. 360), and, so far as the record shows, has never been arrested or censured since, to cancel his citizenship on the ground that his certificate of citizenship had been fraudulently and illegally procured. Cancella-

tion of said certificate was decreed by the District Court, which decree was affirmed by the Circuit Court of Appeals for the Ninth Circuit. Thereafter, certiorari was granted bringing the aforementioned proceedings before this Court for review. In essence, the District Court (R. 39) and the Circuit Court of Appeals (R. 908) decided that, despite petitioner's unimpeached testimony that he had never believed in or advocated the use of force or violence, or disbelief in organized Government, and that he was and is attached to the Constitution and would support the same (R. 360-3, 896-7), and despite his good conduct both before and after naturalization, the mere fact of his membership in the Communist Party of America and participation in its activities as a boy of eighteen to twenty-one (the time of his naturalization), precluded the possibility of his then making truthfully an oath that he was attached to the principles of and would support and defend the Constitution of the United States and bear true allegiance to the same.

Basic Questions Involved.

1. Whether the court can impute certain views to a party and then hold that active membership in that party *ipso facto* precludes an applicant for citizenship from truthfully taking the oath required by the naturalization law to support the Constitution of the United States.

2. Whether one who believes in or advocates changes in the Constitution even involving fundamental, social and economic changes but by the method of amendment prescribed in the Constitution, can truthfully take an oath to support the Constitution.

3. Whether a naturalized citizen may be deprived of his citizenship many years after a competent court has duly

judged him to possess all of the prescribed qualifications, merely because some court then thinks that the principles of a party to which the naturalized citizen belonged are not harmonious with that court's views as to what constituted sound principles that should be held by a citizen.

The questions before this Court are of great importance. Terribly unjust as the decision of the lower courts was to William Schneiderman, the questions involved here transcend in magnitude his personal fate. The decision of the District Court sustained by the Circuit Court of Appeals is tantamount to a holding that as a matter of law, views may be imputed to a member of the Communist Party of America, *ipso facto and without further showing,* despite his unimpeached sworn statements to the contrary and his actual good behavior, establishing that he is not attached to the Constitution of the United States, but is disloyal thereto, is a believer in the overthrow of our Government by force and is *guilty of swearing falsely* when he takes an oath to support the Constitution. In brief, the lower courts in this case have established that, by imputation of beliefs, membership in the Communist Party, in and of itself, can justify the taking away of the *vested* right of citizenship, something which Congress has failed to do. On two separate occasions, bills providing for the exclusion from the United States of Communists have been presented to Congress but were not passed.* In view of the foregoing, a more perfect instance of judicial legislation, resulting in the destruction of political freedom and thought, cannot be conceived than that created by the decisions of the courts below in the instant case.

---

* H. R. 12044 (72d Cong., 1st sess.) passed House; reported by Senate Committee on Immigration on June 11, 1932. H. R. 7120 (74th Cong., 1st sess.) reported out of the House Committee on Immigration and Naturalization on May 27, 1935. Nothing further happened to either bill.

This case in no way involves any determination as to the soundness or wisdom of any of the principles of Communism or of the Communist Party of America or its right to function as a party. The Court is not asked to pass upon these matters in any way. The real question herein is whether our free institutions are to be preserved by totalitarian methods or whether there is to remain that basic fundamental of our constitutional growth, freedom of political thought and belief, with the inherent corollary of freedom of advocacy so long as that advocacy does not suggest the use of force or violence.

The Facts.

As stated, the petitioner came to this country at the age of three. The petitioner's father was a garment worker and the family lived under poverty-stricken circumstances. He had to go to work as a newsboy at the age of 12 and it was during that period that he began to question the principles and customs which permitted such a contrast between wealth and poverty (R. 357). During all the time prior to his becoming a citizen he was working his way through school (R. 358). In 1922 the petitioner, then sixteen years of age, was a student in the Polytechnic Night School at Los Angeles (R. 86, 87, 357). He became one of the organizers of the Young Workers' League of California and an educational director thereof, with the duties of organizing classes for the purpose of studying the theory of Marxism and the political and economic conditions in the countries, but he did no teaching, his duties being to merely register students and send out notices of meetings (R. 87, 359). The classes were open to anybody who desired to attend (R. 87). The name of this organization was later changed to the

Young Communists' League (R. 90). The Young Workers' League, in teaching the philosophy of the League, used the generally accepted writings of Marx and Lenin (R. 88, 89). During this period, the petitioner merely considered himself a student of the subject of Marxism and Leninism, just as he had studied philosophy or sociology at college (R. 359). His job as the secretary of the local Party organization as a boy was merely that of a corresponding secretary; he was not an officer (R. 358, 359). At no time prior to his citizenship, had he ever been arrested for any reason, and he had behaved as should a citizen of the United States (R. 360). In 1924 or 1925 the petitioner became a member of the so-called Workers' Party, which later on changed its name to the Workers' Communist Party and then to the Communist Party of America (R. 91), by which name the Party is known at present (R. 92). During all this time the petitioner has generally subscribed to the principles of that Party *which he interpreted to be the same as those enunciated in the Constitution of the Party* (R. 92, 365, 84, 14-30).

Many excerpts from pamphlets and books were introduced by both the government and the petitioner to define the principles of Communism. As stated by the Circuit Court of Appeals in its opinion, these excerpts showed that there was a great deal of conflict among writers as to these principles, particularly on the question as to the advocacy of the use of force and violence to overthrow a government (R. 917).

But prior to the adoption of the constitution and by-laws of the Communist Party of America in 1938 there had been no official party expression, in the way of a platform or otherwise, of the principles of the Communist Party of America (R. 364, 365).

The government called only three witnesses, Humphreys, a former member of the Communist Party of America (R. 181, 184), who testified that "as far as the application of force and violence was concerned, the Communist Party took the defensive and put the first users of force upon the capitalist government" (R. 200); Hynes, a police officer, who identified a good deal of communist literature and gave it as his opinion that the method of the Communist Party "of bringing about a change of the form of government is one of force and violence" (R. 330), and the petitioner, who frankly stated just what he believed and emphatically denied that he had ever believed in the overthrow of the Government of the United States by force and violence.

The petitioner introduced the testimony of Professor Brown (R. 477) and of Professor Thompson (R. 695), both of Stanford University (R. 480, 697), given in another proceeding. They discussed the Marxian philosophy as evidenced by the writings of Marx, Engels and Lenin with the conclusion that it did not involve the use of force and violence as a method of attaining its objective (R. 544, 562, 618, 685, 736, 755, 757, 762-763).

The conclusions of the lower courts were plainly deduced from Communist writings, admittedly conflicting on the subject of the use of force and violence.

The Applicable Statutory Law.

The recent case of *Kessler* vs. *Strecker*, decided by this Court in April, 1939 (307 U. S. 22), demonstrates how carefully and strictly the statutes with respect to the admission, deportation and naturalization of aliens must be construed and applied. In the light of this case, it is worth while

to analyze carefully the sections of the statutes dealing with *naturalization* as they stood on the date of Schneiderman's admission to citizenship (see pp. 18-21 *infra*). Act of June 29, 1906, Chap. 3592, Sec. 4, 34 Stat. 596, required a petition of the applicant, and provided in part as follows:

> "Second. * * * The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States * * *.
>
> The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident [for the requisite number of years] * * * and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States."

Said section 4 as it stood at the time of Schneiderman's naturalization, further provided:

> "Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all

allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record."

Act of June 29, 1906, Chap. 3592, Sec. 15, (8 U. S. C., Sec. 405), under which this proceeding was brought, states, among other things, that:

"It shall be the duty of the United States district attorneys for the respective districts * * * to institute proceedings in any court having jurisdiction to naturalize aliens * * * for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured."

The statutes governing *deportation*, as they stood in 1927 and as they stand today, are set forth in the appendix hereto.

Analysis of Opinions of the District Court and of the Circuit Court of Appeals.

District Court Opinion. The District Court held that:

> "The conclusion which this Court reaches * * * is that the organizations to which defendant belonged were opposed to the principles of the Constitution and advised, taught and advocated the overthrow of the government by force and violence, and that defendant, by reason of his membership in such organizations and participation in their activities, was not 'attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.' In *re* Saralieff, above. Therefore, defendant obtained his certificate of citizenship illegally" (R. 44, 45).

It will thus be seen that the District Court, in its opinion, based its decision of "illegality", on its holding that membership in the Communist Party of America precluded *attachment* to the Constitution.

District Court Findings. The gist of finding number IV was that the certificate of naturalization was "illegally procured" because the respondent "was not * * * and * * * had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same but was a member of * * * the Communist Party of the United States of America * * *" (R. 48, 49).

In Finding number VI, the District Court held that the certificate of naturalization was "fraudulently procured" in that "said respondent concealed from the naturalization court the fact that he was affiliated with the Communist Party and supported the principles thereof" (R. 50).

In Finding number VII, the District Court found that the certificate of naturalization was "illegally and fraudulently procured in that when the respondent took the oath to support the Constitution of the United States and to abjure allegiance to any foreign prince", he did not "intend to support the Constitution" and did not "intend absolutely and entirely to renounce" allegiance to any foreign prince (R. 51, 52).

Opinion of Circuit Court of Appeals. The Circuit Court of Appeals in its opinion refused to consider the charge of "fraud". The Circuit Court of Appeals considered only whether or not there was sufficient evidence to sustain the findings of the District Court that the certificate was procured "illegally". On this point it said (R. 912):

> "Appellant makes considerable argument to the effect that there was no proof of fraud. It is unnecessary to consider this contention. Cancellation of the certificate of naturalization is authorized by §405 on the ground of illegality."

The illegality to which the Circuit Court of Appeals gave attention was illegality asserted to arise from a false oath:—the oath (a) to support the Constitution, and (b) to renounce allegiance to foreign states. The Circuit Court of Appeals held that if the oath is falsely made, then the declarant "obtains his citizenship illegally" (R. 913). The Circuit Court pointed out that the District Court had found that the oath was falsely made in both aspects,

leading the Circuit Court of Appeals to define the question before it in the following language:

> "Thus we arrive at the narrow question: Are such findings clearly erroneous." (R. 915)

By following the same process pursued by the District Court, to wit, by ascribing to Schneiderman, *merely because of his membership and general activity in the Communist Party of America,* a belief in principles which the Court held to be contrary to the "views of" the Constitution, the Circuit Court of Appeals held that there was evidence to sustain the findings of the District Court so that the findings could not be pronounced "clearly erroneous."

The substance of the decisions of the lower courts is this: That upon proof of the fact that a man is an active member of the Communist Party of America, and upon further proof of what various people have written respecting the Communist Party, especially what Marx wrote in 1848—yes, 1848—with reference to conditions in Europe at that date, it is established that such Communist Party member *ipso facto* and as a matter of law is not attached to the Constitution of the United States, does not intend to support and defend the Constitution, no matter how many oaths he may take, and in fact advocates the overthrow of the Government of the United States by force, no matter how much he may swear that he does not believe in or advocate such conduct and no matter how well-behaved he may have been as a citizen or resident of this country. In reaching these conclusions, the lower courts both brushed aside as of no consequence:

1. The respondent's own testimony as to what in fact were his beliefs with respect to what the courts deemed to be crucial questions, such as the fact that he did not

believe in or advocate the use of force and violence to overthrow the Government of the United States (R. 360, 361).

2. The fact that there was no proof that the respondent personally had believed, advocated or taught many of the condemned doctrines, the proof being in fact directly to the contrary (R. 360, 361, 362 and 363).

3. The fact that so far as the proof was concerned the conduct of the respondent as a citizen had always been exemplary. He had always *behaved* as a man of good moral character, "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same" (unless the mere fact of party membership and participation in its political activities is to be deemed a contradiction thereof) (R. 360, 362, 363).

4. That prior to 1938 there had been no formulation of a platform for the Communist Party of America (R. 364, 365), and that when a platform was finally adopted in 1938, it did not advocate any of the condemned doctrines (R. 14-38), and finally

5. That there were sharply conflicting views in the various writings introduced in evidence and in the testimony of the government's witnesses both as to party doctrines and as to methods of accomplishing party aims (See opinion of Circuit Court of Appeals, R. 917). The lower courts, for the purposes of their decisions, out of this conflict of views, adopted as authoritative and imputed to the petitioner, in numerous instances in direct contradiction of his unimpeached testimony, only those expressions of aims and doctrines which they found to be obnoxious.

Specification of Assigned Errors to be Urged.

1. The decision of the court below is erroneous because in effect it amounts to the setting of standards for citizenship by the court instead of by Congress; and it actually establishes a rule of naturalization which Congress has deliberately failed to enact and thus the lower court has acted beyond the scope of its powers.

2. The court below erred in holding that the belief in or advocacy of certain views by petitioner, to be accomplished by the peaceful method of amendment to the Constitution, precluded his attachment to the principles of the Constitution, and precluded his taking truthfully an oath to support and defend the Constitution.

3. The court below erred in holding that the petitioner made a false oath to support and defend the Constitution, based on the claim that he advocated the overthrow of the government of the United States by force and violence, and on that basis setting aside the decree of the naturalization court and depriving him of his citizenship, without the support of direct and substantial proof that he did so believe and advocate. There is no proof of such belief or advocacy on petitioner's part.

Summary of Argument.

1. Congress can alone make active membership in the Communist Party of America a bar to naturalization. It has not done so.

Though the petitioner complied with the requirements of the naturalization statutes in effect in 1927, the date of his naturalization, the lower court has created, *ex post facto*,

a new qualification not prescribed by Congress, namely, that active membership in the Communist Party of America *ipso facto* disqualifies an applicant from naturalization and in 1940 and 1941 applied this *ex post facto* qualification to Schneiderman's naturalization in 1927. Congress alone has the power to specify the prerequisites of naturalization and to date has not specified active membership in the Communist Party or belief in the principles thereof as enunciated in its constitution as a ground for denial of citizenship. Hence the court below has exceeded its power and therefore erred in cancelling petitioner Schneiderman's citizenship.

2. The belief in or advocacy of changes in the Constitution, even involving fundamental, social and economic changes, but by the method of amendment prescribed in the Constitution, does not preclude either a citizen or an applicant for citizenship from truthfully taking an oath to support the Constitution.

An applicant for citizenship, as well as every citizen, whether native born or naturalized, has the fullest right to advocate the views asserted by the court below to be communistic and "not those of our Constitution," and to seek to have them embodied in the Constitution through the peaceful method of amendment.

The Constitution itself provides for change and there have been many amendments thereto, some of which are radical departures from the principles believed by the founders to be fundamental to our form of government. Free institutions can only be preserved by free expression of the popular will, and an oath to support the Constitution and the laws of the United States imports no more than a willing obedience to them while in force. Advocacy of change therein in a lawful manner does not import lack of

attachment to the Constitution, nor does it mean that the applicant swears falsely when he takes an oath to support and defend the Constitution. Further, the evidence does not show that the petitioner Schneiderman personally believed in many of the views which the court below held to be obnoxious to our Constitution. In any event, the petitioner, Schneiderman, desired to accomplish those social and economic changes which he advocated only through peaceful constitutional means without resort to force or violence (R. 897, 898).

3. The decision of the lower court constitutes a drastic abridgement of freedom of political belief and thought, of free speech and freedom of the press.

The principal objective of the first amendment to the Constitution is to insure freedom of opinion as to the form of government, political principles and measures and freedom of speech and publication with respect thereto. When the lower court decided that certain alleged communistic doctrines were not harmonious with the Constitution, it, at the same time, struck at one of the most fundamental rights guaranteed by the Constitution, namely, the right to freely criticize it and every principle therein and advocate change, however fundamental, by amendment. An alien applicant for citizenship while in this country enjoys the same protection given by the Constitution to a native born citizen, so far as civil liberties are concerned, and is entitled to the same freedom of expression and advocacy as such native born citizen.

4. The decree of the naturalization court cannot be set aside and a naturalized citizen be subjected years after naturalization to such drastic action as the deprivation of his citizenship on the basis of a charge that he made a

false oath to support the Constitution because of a claim that he believed in and advocated the overthrow of the Government by force, except upon direct and substantial proof that he did so believe and advocate. There is no proof of such belief or advocacy on petitioner's part.

Thirteen years after granting citizenship to the petitioner the courts below have in effect set aside the decree of the naturalization court and deprived the petitioner of his citizenship on the ground that his oath to support the Constitution was false because he believed in and advocated the overthrow of the Government by force. In reaching such conclusion as to belief and advocacy, the decisions below are based solely upon a series of arbitrary imputations of belief, starting with conflicting views of foreign writers purporting to discuss the topic of communism, and they completely disregard the petitioner's clear, unimpeached and explicit testimony that he never believed in or advocated the use of force. To convict a man of a false oath and thus deprive him of his citizenship held for many years there should be at least some very direct and substantial proof of falsity. Here there is no direct proof whatsoever. The arbitrary imputation of belief indulged in by the lower courts in order to reach the ultimate conclusion that the petitioner had sworn falsely is in every respect contrary to our concepts of freedom of thought and impartial justice and cannot, as a matter of law, be the basis of a charge of fraud or illegality justifying cancellation of citizenship and, in effect, the setting aside of the decree of the naturalization court, a court of competent jurisdiction.

POINT I.

Congress alone can make active membership in the Communist Party of America a bar to naturalization. It has not done so.

With respect to the qualification of an alien for naturalization, it will be seen that the statutes (*supra*, pp. 8 and 9) set up three tests; one, retrospective (to wit: residence and past behavior), two, a statement of present beliefs and present party affiliations; and three, prospective, an oath to support the Constitution.

One. Retrospectively, the statute requires a certain amount of residence, proof that applicant was not a polygamist and proof to the satisfaction of the court that during the requisite residential period the applicant "has *behaved* as a man of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same." It will be seen that importance is attached retrospectively to *behavior*, and, in general, it may be said that the behavior required was the type of behavior expected of a good native-born citizen.

The statute was explicit as to how the fact of past residence and past behavior were to be established. It provided that:

> "In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character (etc.), * * * shall be set forth in the record."

The petitioner, unquestionably, provided the required oath and the other proof.

Now, it is clear that, so far as his past was considered, the young man Schneiderman, twenty-one years old in 1927, had in fact behaved, during his boyhood, like a citizen of good moral character, attached to the Constitution and well disposed to good order of the same. He had graduated from night school and went for about two-and-a-half years to the University of California at Los Angeles (R. 357). He had never been arrested nor censured by any law enforcement agency and had, at all times, deported himself as should a citizen of the United States (R. 360). He was working his way through school (R. 358). It is true he joined the Young Workers League for the purpose of investigating and studying what the principles of Communism had to say about the conditions of society as he saw them:

> "• • • between the age of 16 and 21, I considered that my membership and activities in the Young Workers League and in the Party were only in an attempt to investigate and study the causes and reasons behind the social and economic conditions under which I lived and as I saw them" (R. 357).

Can anyone say that this was not the reasonable conduct of a mentally alert boy, who lived in poverty-stricken circumstances? (R. 357). So much for the retrospective requirements for naturalization. We do not believe that it can be said with justice that the respondent had not complied with them in spirit and reality as well as in form.

Two. In addition to past behavior, the applicant had to show by his own petition what certain of his present beliefs were and what were his present party affiliations with respect thereto. His petition, as above shown (Act of June 29, 1906, Chap. 3592, Sec. 4, 34 Stat. 596), had to set forth that he was not a disbeliever in or opposed to organ-

ized government or a member of or affiliated with any organization teaching disbelief in or opposed to organized government, and that he was not a believer in polygamy. This is all that the statute required in the way of a statement of beliefs and party affiliations.

The applicant's petition, which was in the statutory form (R. 74-78), complied with the requirements as to the statements of his beliefs and affiliations. It stated that he was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government and he was not a polygamist or a believer in the practice of polygamy. *The government does not contend that the petition of Schneiderman, required by Section 4, was in any way false in these particulars.*

It is true that the District Court found:

> "That it is not true that at the time of the filing of his petition for naturalization respondent was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government" (Finding IV, R. 48).

The Government does not contend that there is any evidence to support that finding. It is not disputed that members of the Communist Party, generally speaking, believed in some form of organized government (R. 330, 331, 363 and 863). There is certainly an organized government in Russia. The petitioner, Schneiderman, testified not only that he believed in organized government, but that he specifically believed in the government of the United States (R. 362, 363, 377, 896 and 897).

Three. The other requirements of the naturalization statutes are prospective and they all have to do with an

oath. The oath is largely the applicant's declaration of his intentions for the future. Under the requirements of the Act of June 29, 1906, Chap. 3592, Sec. 4, 34 Stat. 596, by an oath made in open court, he has to declare that he "*will*" support the Constitution of the United States and that he absolutely renounces allegiance to any foreign prince or state, and that he "*will*" support and defend the Constitution and laws of the United States against all enemies. The provisions of Section 4 as to the application supplemented those as to the oath, by requiring that the petition which the applicant should sign should state his intentions as follows: "That it is his intention to become a citizen of the United States and to renounce" allegiance to any foreign state, and particularly by name, the state of which he at the time of signing his petition may be a subject, and it is his intention to reside permanently within the United States.

The Circuit Court of Appeals was apparently unwilling to follow the District Court and place the decision of illegality on the ground that Schneiderman's past behavior, prior to his naturalization date, was not the required behavior. Consequently, the Circuit Court of Appeals found illegality in a false oath as to Schneiderman's intentions for the future.

Except for his membership in the Communist Party of America and except for his general adherence to the principles of the Communist Party of America as finally embodied in its constitution (R. 365), it is not claimed that when the petitioner Schneiderman, at the age of twenty-one, took this oath, he did not in good faith intend to support the Constitution and did not in good faith repudiate all foreign allegiance. His entire conduct both before his naturalization at the age of twenty-one and since, has been in full

consonance with his oath. The Government's only contention to the contrary is the mere fact of membership in the Communist Party!

The effect of the decisions of the lower courts in this case is to establish an irrebuttable presumption that a member of a political party, to which party a court has imputed views which that court conceives to be obnoxious to the Constitution, merely by reason of such membership, cannot truthfully take an oath to support the Constitution and therefore cannot become a naturalized citizen.

In essence, the lower court decisions add another qualification requirement for naturalization to those specified in the Act of June 29, 1906, Chap. 3592, Sec. 4, 34 Stat. 596. And further, they add this additional qualification in the years 1940 and 1941 and then apply it *ex post facto* to the application made by Schneiderman in 1927!

The Circuit Court of Appeals held that certain alleged Communistic views, which it catalogued, "are not those of our Constitution" (R. 916), and that consequently one who held these views (even though they were merely ascribed to him by virtue of party membership) was disqualified for naturalization. As we have seen, Congress expressly dealt with the subject of beliefs and the subject of party affiliations as affecting qualification for naturalization. In the realm of advocacy or adherence to principles, Congress prescribed merely that a man should show that he did not disbelieve in organized government, and that he did not believe in polygamy. In the realm of party affiliation, Congress merely prescribed that a man should not be affiliated with a party which disbelieved in or opposed organized government. The decision of the lower courts in this case is equivalent to adding another specification of beliefs and party affiliation, to wit, that the applicant by his petition must

also show that he is not a believer in the views catalogued by the Circuit Court of Appeals in this case as Communistic and pronounced obnoxious (R. 916), and that he is not affiliated with any organization teaching belief in those views.

Such sweeping proscription of membership in a political party as applied to aliens seeking naturalization can not, we submit, come from the courts, but must come from Congress. Congress *alone* has the power to specify the prerequisites of naturalization. Even if, for argument's sake, we assume that Congress would have the power to say that no alien who is a member of the Communist Party should be admitted to citizenship, it is clear that Congress, to date, has not gone that far.

In dealing with *deportations*, Congress has specified with particularity those doctrines the advocacy of which shall so disqualify an alien as to make him the subject of deportation. It is noteworthy that both as the law stood in 1927 and as the law stands today (Act of February 5, 1917, Chap. 29, Sec. 19, as amended, 8 U. S. C. Sec. 155, Act of October 16, 1918, Chap. 186, Secs. 1 and 2, as amended, 8 U. S. C. Sec. 137 (a)-(g)), as pertinent to our present discussion, the only disqualifications justifying *deportation* of an alien were disqualifications having to do with violence, to wit, advocating the unlawful destruction of property or anarchy or the overthrow of the Government by force or violence, or of all forms of law, or the assassination of public officials. Notwithstanding the cases in the lower courts dealing with the deportation of alien Communists which have arisen in the last few years, the Congress, in its amendments to said Sections above mentioned, passed on June 28, 1940 (Act of June 28, 1940, Chap. 439, Secs. 20 and 23, 54 Stat. 671, 673), still limited deportation for political offenses to advocacy of the acts of violence above specified,

and in no way made belief in the general principles of Communism, as such, a ground for deportation.

The specifications of qualifications for *naturalization*, the lack of which would preclude admission to citizenship, were, as we have seen from the statutes quoted above, much less stringent than those affecting deportation. They obviously did not specify a disbelief in Communism.

By the Act of June 29, 1938, Chap. 819, 52 Stat. 1247, Congress very materially amended and enlarged the provisions of Section 4 of the Act of June 29, 1906, Chap. 3592 (8 U. S. C. Sec. 382), dealing with the prerequisites of admission to citizenship, and by the Act of June 20, 1939, Chap. 224, Sec. 3, 53 Stat. 844, Congress amended said Section 4 (8 U. S. C. Sec. 381) with respect to the oath to support the Constitution. Yet, notwithstanding all of the widespread agitation in the country against Communism and notwithstanding the cases that had arisen in the courts with respect to the deportation of aliens for Communistic views, Congress did not alter the character of the oath required to be taken as to supporting the Constitution, nor did it alter in any substantial particular the provisions of Section 4 (8 U. S. C. Sec. 382) as it theretofore stood with respect to the previous behaviour of the applicant as a person of good moral character attached to the principles of the Constitution.

In fact, as we have stated above (page 4), Congress has refused so to do on earlier occasions.

Kessler vs. *Strecker*, 307 U. S. 22 (1939), makes it clear that in dealing with the naturalization statute the Courts must adhere strictly to the express specifications laid down by Congress with respect to the qualifications for naturalization. It is not for the courts to enlarge the requirements.

POINT II.

The belief in or advocacy of changes in the Constitution, even involving fundamental, social and economic changes, but by the method of amendment prescribed in the Constitution, does not preclude either a citizen or an applicant for citizenship from truthfully taking an oath to support the Constitution.

The Circuit Court of Appeals catalogued (R. 916) seven specific views asserted to be Communistic views, which it held to be "not those of our Constitution", and consequently that no one who held and advocated these views and sought (even by the peaceful method of amendment to the Constitution) to put them into effect, could truthfully take an oath to defend the Constitution.

We submit that however radical some of the alleged views may seem to be, every citizen, whether native-born or naturalized, has the fullest right to advocate these views and to seek to have them embodied in the Constitution through the peaceful method of amendment. The Circuit Court of Appeals in this case did not suggest that there was any difference in the rights of an applicant for citizenship and a native-born citizen to advocate the views in question. There seems, however, to have been a suggestion in another case that while citizens may freely advocate constitutional changes, applicants for citizenship may not do so, *U. S. v. Tapolcsanyi*, 40 F. (2d) 255 (C. C. A. 3rd, 1930), *infra*, p. 29.

There is no basis for that distinction. The Congress has never prescribed it.

The Constitution itself provides for change and there have been twenty-one amendments, some of them radical departures from principles believed by the founders to be

fundamental to our form of government. Many thought that the 18th Amendment violated fundamental provisions of the Constitution. But the view that it was a compact unalterable in fundamentals was rejected by this Court, which held that the Constitution could be changed in any respect at the will of the people expressed in the manner provided by the Constitution. *National Prohibition Cases*, 253 U. S. 350 (1920).

Free institutions can only be preserved by the free expression of the popular will. They will perish from totalitarian methods. Their danger lies in repression and in insidious and unseen attacks rather than in open advocacy of change by constitutional methods.

An oath to support the Constitution and the laws imports no more than a willing obedience to them while in force. Advocacy of change in a lawful manner does not import lack of attachment to the Constitution nor ill disposition to the good order and happiness of the United States nor mean that the applicant swears falsely when he swears to support and defend the Constitution.

As to several of these views which the Circuit Court of Appeals held to be obnoxious, there was no proof that they were the personal views of Schneiderman, as, for example, the alleged Communistic view that the present government here should be abandoned and one like that of the Soviet Union established; or the alleged Communistic view that the Supreme Court and Senate should be abolished; or the alleged Communistic view that the government should be controlled by one political party; or the alleged Communistic view that the various countries of the world should establish a world union of Soviet Socialist Republics. In fact, with respect to the claim that the Communist Party advocated that the agents of production should be confis-

cated without compensation, he asserted that the Party was only preaching in the United States the nationalization of certain private industries "with compensation" (R. 877, 878).

POINT III.

The decision of the lower court constitutes a drastic abridgement of freedom of political belief and thought, of free speech and of the freedom of the press.

The great vice of the opinion of the Circuit Court of Appeals with respect to the entire catalogue of views pronounced to be obnoxious is that it constitutes a wholly unwarranted and unnecessary restriction upon freedom of political belief and thought, freedom of speech and freedom of the press. The main objective which the people of the United States had in mind in adopting the First Amendment was to insure freedom of opinion as to the form of government and political principles and measures, and freedom of speech and freedom of publication with respect thereto. Freedom of speech and of the press in political discussion was the main freedom our forefathers sought to insure by this amendment. Save as their speech, and their publications might constitute treason or libel or incite to crime, one of the dominant ideas upon which the American people were insistent in the formulation of their Constitution was that the citizens should have the right to speak freely and to publish freely any and all views that they might have respecting the form of government and the nature of their political and economic rights. *Whitney* v. *California*, 274 U. S. 357 (1927); *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Stromberg* v. *California*, 283 U. S. 359 (1931).

Consequently, the decisions of the lower courts in this case strike at the very heart of one of the most basic doctrines of the Constitution. While the lower courts were deciding that certain alleged Communistic doctrines are not harmonious with the views of the Constitution, they overlooked the fact that they were at the same time impairing one of the most fundamental rights guaranteed by the Constitution, to wit, the right to criticize freely the Constitution and every principle therein and to advocate a change thereof.

And for the exercise of this right, the Constitution itself provides the most ample means. It provides that, except in certain particulars only, the Constitution may be freely amended. The right of amendment freely invites whatever alteration the citizens of the country may see fit to make in the course of time as the passing years give them a different understanding of the functions of Government and of the best form under which those functions can be executed.

Beyond question, within the doctrine announced by this Court in the recent case of *Bridges* vs. *State of California*, U. S. Sup. Ct., Bulletin 235 (1941), no citizen can be deprived of the right to believe and advocate any and all of the various views which the Circuit Court of Appeals herein condemned as contrary to the views of the Constitution.

With reference to the breadth and scope of the personal liberties protected by the First Amendment to the Constitution, this Court, in the *Bridges* case said, at page 240:

> "* * * On the contrary, the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society."

It may be urged that while a native-born citizen is guaranteed that freedom of speech and of the press which would allow him to express his opinions freely with respect to the views pronounced obnoxious by the Circuit Court of Appeals, no such right exists in an alien about to be naturalized. (*See U. S.* v. *Tapolcsanyi*, 40 Fed. (2d) 255 (C. C. A. 3rd, 1930).) Even if we should admit, merely for the purposes of argument, that Congress has the power to restrict as freely as it sees fit the freedom of speech of aliens and to deny naturalization to an alien who has given expression to views which a native-born citizen could express with propriety, it is enough to say that, so far, Congress has not, in its control of naturalization, imposed any such restrictions. The prohibition of the First Amendment is sweeping and categorical ("Congress shall make *no* laws, etc. * * *"). This, in terms at least, would apply to a naturalization law. *See Bridges* v. *State of California, supra.* We submit that it would be an astounding doctrine to deny to an alien admitted to our shores and about to become a citizen that freedom of speech which a native born citizen enjoys.

The authorities are to the effect that an alien who is properly in this country enjoys, while here, the protection given by the Constitution to a native born citizen, so far as civil liberties are concerned. The case of *Bridges* vs. *State of California, supra*, had to do, among other things, with the freedom of speech that would be accorded to Bridges. Although the case did not turn upon the fact that Bridges was a resident alien, nevertheless, in view of the notoriety of this man, that fact must have been known to the entire Court. It apparently had no bearing in the mind of the Court upon the application of the First Amendment to Bridges' conduct. See also *Wong Wing* vs. *U. S.*, 163 U. S.

228 (1896); *Truax* v. *Raich*, 239 U. S. 33 (1915); *Powe* v. *United States*, 109 Fed. (2nd) 147 (C. C. A. 5th 1940) cert. den. 309 U. S. 679 (1940); *United States* v. *Parson*, 22 Fed. Supp. 149 (D. C. S. D. Calif. 1938) rev. on other grounds *sub nom. Graham* v. *United States*, 99 Fed. (2) 746 (C. C. A. 9th 1938).

In the *Tapolcsanyi* case, *supra*, the Circuit Court of Appeals said (40 Fed. (2d) 255, at 257):

> "While no one may be deeply attached to every provision of the Constitution and while all citizens have a right to work for its amendment in an orderly way, that is the right of a citizen. The respondent approached that right not as a citizen but as an alien. As an alien he had no such right."

While it may well be that, strictly speaking, an alien has no "right" to advocate amendments to the Constitution, certainly in the absence of express prohibition by Congress there can be no wrong committed by him in advocating an amendment (see cases cited above). Nor can such advocacy properly be deemed proof of lack of attachment to the principles of the Constitution, unless it similarly constitutes proof against a citizen of such lack of attachment. Suppose, for example, that an alien about to be naturalized expressed the view that the Constitution should be amended so as to abolish the Electoral College. Is that fact sufficient to deprive him of his right to become a citizen merely on the claim that he thereby shows lack of attachment to the principles of the Constitution? We submit that there can be no force in any suggestion that under the present law an alien about to be naturalized has not the same freedom of thought, speech and of the press as a native-born citizen. It follows that even if Schneiderman, at the age of 21, held and advocated all of the views pronounced by the Circuit Court of Appeals to be obnoxious (which is contrary to the evidence),

he had a perfect right to do so and could not be denied naturalization on account thereof, much less have his naturalization cancelled therefor thirteen years after the event.

POINT IV.

The decree of the naturalization court cannot be set aside and a naturalized citizen be subjected years after naturalization to such drastic action as the deprivation of his citizenship on the basis of a charge that he made a false oath to support the Constitution because of a claim that he believed in and advocated the overthrow of the Government by force, except upon direct and substantial proof that he did so believe and advocate. There is no proof of such belief or advocacy on petitioner's part.

The District Court found that when petitioner, then aged 21, took the oath, he believed in and advocated the overthrow of the government of the United States by force —notwithstanding his clear and explicit testimony that neither the party nor he ever so believed or so advocated, notwithstanding that there was no proof of his personally having advocated such action and notwithstanding his good behavior as a citizen since naturalization. The District Court's finding was based upon picking out of the conflict of views, as expressed in the mere writings of Communists, those writings in which the use of violence was advocated, then imputing that particular set of views to the Third International, and then imputing the views thus attributed to the Third International to the Communist Party of America (although it was admitted by the government that the constitution of the Communist Party of America did not advocate force and violence) and then imputing such views to the petitioner, merely because he was a member of the

Communist Party of America and its predecessor, and by such process giving the lie to his own direct testimony and the proof of his conduct.

It was on this flimsy foundation that the courts below, thirteen years after the event, in effect set aside the decree of the naturalization court, by concluding that Schneiderman took a false oath to support the Constitution.

False, perjured swearing and consequent "illegality" in obtaining the certificate of naturalization surely cannot be established by any such a manufactured process. There should be at least some very direct and substantial proof in order to convict a man of a false oath and thus to deprive him of a citizenship which he has held for many years. We submit that in this case not only is there no such substantial proof, there is no direct proof whatsover. As against the direct and unimpeached testimony of the petitioner and the very substantial proof of his beliefs afforded by his conduct, the existence of a false oath is premised by the lower courts upon nothing more than a barefaced chain of imputations, starting with the conflicting views of foreign writers. Certainly, this chain of imputations affords no basis for brushing aside petitioner's own testimony and the proof given by his conduct, and thereby convicting him of having made a false oath, and on the basis of falsity established in this peculiar manner, setting aside the decree of a competent court.

It is clearly unsound to impute to a party all the views of party members expressed in their writings or speeches, no matter how high their rank in the party, and it is doubly unsound to impute to each and every member of the party the views thus imputed to the party. Democrats and Republicans, high in party circles, differ constantly in their interpretation of the fundamental principles of their respective parties, as their writings, speeches and votes in Congress clearly indicate, and frequently persons high in the party

avowedly do not adhere to all of the pronounced principles of their party.

In effect, the lower courts have said that the evidence introduced as to what third parties advocated in their writings is so conflicting that the petitioner is guilty. Would it not have been more reasonable and certainly more in accord with our laws' basic assumption of a man's innocence to have said that the evidence introduced is so conflicting that the petitioner is *not* guilty.

There was absolutely no testimony in any way directly connecting the petitioner Schneiderman personally with any belief in or advocacy of the use of force or violence to overthrow the government of the United States. The only testimony dealing with his personal views and personal conduct was his own testimony. He gave unimpeached testimony that at no time prior to naturalization did he ever believe, teach or advocate the use of force and violence (R. 360-362, 342-343) and that his attitude at all times since has been the same (R. 897-898). Certain of his testimony dealing with this particular question is so pertinent as to warrant its being set forth here at some length (R. 373):

> "We deny that the enunciation of our principles constitute the advocacy of the overthrow of the government by force and violence or the use of force and violence. The Communists do not desire the use of force and violence. We desire and strive for peaceful and democratic means for removing exploitation and oppression."

Again:

> "Those who accuse the Communist Party of advocating the overthrow of the government by force and violence often take quotations out of the context of these polemical writings without regard to the rest of the context or to the intent of the authors to defend certain theoretical conclusions" (R. 376).

Further, the petitioner testified, without contradiction, that at all times he subscribed to the principles of the Party as enunciated in its constitution (R. 92, 365, 14-30), and with reference to such constitution, in its brief in opposition to the petition for a Writ of Certiorari herein, the Government conceded (pp. 6 and 7):

> "Petitioner, on the other hand, testified that the Constitution and By-Laws of the American Communist Party, adopted in 1938, was the only official expression of the principles of the Communist Party (R. 364), that it overrode any conflicting statement (R. 365-368, 834-839, 856-861), *and that it represented the views which he personally had always maintained* (R. 365). *This constitution of the Party* (R. 14-38) *contains nothing inconsistent with a peaceful accomplishment of the Party objectives and states the Party's defense of the United States Constitution against its reactionary enemies* (R. 14). Petitioner's evidence is to the effect that force and violence has not been advocated by the Party (R. 375-376, 461-466) but that it predicted its use by the forces of capitalism against the workers, to prevent their obtaining control of the Government, and that the Party intended its use only in defense of the popular Government (R. 401-426, 592, 679-688, 755-757). * * *" (Italics ours.)

Thus, the Government admits that the Party constitution does not advocate force or violence and states the Party's defense of our Constitution, while the petitioner's *unimpeached* testimony shows that said constitution represented the views he had *always* maintained. No further proof seems necessary to establish that he *never* believed in or advocated the overthrow of our Constitution or Government by force or violence.

The Circuit Court of Appeals found the proof so conflicting as to the advocacy of force that the most it could

declare in its opinion was that they were "unable to say that the finding of the trial court was * * * clearly erroneous" (R. 917).

To set aside the decree of the naturalization court and to deprive Schneiderman of his citizenship on the basis of views thus imputed to him, then a young man, of twenty-one, out of the conflicting writings largely of foreigners dealing with foreign conditions, is a monstrous injustice. If Schneiderman can be deprived of his citizenship on the basis of these imputed views, the citizenship of every naturalized citizen in the United States is in danger. The arbitrary imputation of belief indulged in by the lower courts, in order to reach the ultimate conclusion that the petitioner had falsely sworn, is in every respect contrary to the fundamental concepts of freedom of thought and impartial justice, upon which the very basis of our Constitutional democratic form of government rests. Such arbitrary imputation cannot, as a matter of law, be the basis of a charge of fraud or illegality justifying cancellation of citizenship.

Conclusion.

The decree of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

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Appendix.

Statutes Governing Deportation as They Stood in 1927.

Act of 1918 as Amended in 1920.

That the following aliens shall be excluded from admission into the United States:

(a) Aliens who are anarchists;

(b) Aliens who advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that advises, advocates, or teaches, opposition to all organized government;

(c) Aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage;

(d) Aliens who write, publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, distribution, publication, or display, any written or printed matter, advising, advocating, or teaching, opposition to all organized government, or advising, advocating or teaching: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of

officers generally) of the Government of the United States or of any other organized government, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage;

(e) Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (d).

For the purpose of this section: (1) the giving, loaning or promising of money or anything of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and (2) the giving, loaning or promising of money or anything of value to any organization, association, society, or group, of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation.

(Act of October 16, 1918, C. 186, Sec. 1, 40 Stat. 1012, as amended by Act of June 5, 1920, C. 251, 41 Stat. 1008.)

Sec. 2. That any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in section one of this Act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act irrespective of the time of their entry into the United States.

(Act of October 16, 1918, C. 186, Sec. 2, 40 Stat. 1012.)

Act of 1917.

SEC. 19. That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or impor-

tation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided*, That the marriage to an American citizen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed by this Act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act: *Provided further*, That the provisions of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of

aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final.

(Act of February 5, 1917, C. 29, Sec. 19, 39 Stat. 889.)

Statutes Governing Deportation as They Stand Today.

Act of 1918, as Further Amended in 1940.

That any alien who, at any time, shall be or shall have been a member of any one of the following classes shall be excluded from admission into the United States:

(a) Aliens who are anarchists;

(b) Aliens who advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that advises, advocates, or teaches, opposition to all organized government;

(c) Aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized govern-

ment, because of his or their official character, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage;

(d) Aliens who write, publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, distribution, publication, or display, any written or printed matter, advising, advocating, or teaching, opposition to all organized government, or advising, advocating or teaching: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage;

(e) Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (d).

For the purpose of this section: (1) the giving, loaning or promising of money or any thing of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and (2) the giving, loaning or promising of money or any thing of value to any organization, association, society, or group, of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation.

(Act of October 16, 1918, C. 186, Sec. 1, 40 Stat. 1012, as amended by Act of June 5, 1920, C. 251, 41 Stat. 1008, as further amended by Act of June 28, 1940, C. 439, Sec. 23, 54 Stat. 673; 8 U. S. C. Sec. 137, subsec. (a) to (f) inclusive.)

SEC. 2. Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in section 1 of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

(Act of October 16, 1918, C. 186, Sec. 2, 40 Stat. 1012, as amended by the Act of June 28, 1940, C. 439, Sec. 23, 54 Stat. 673; 8 U. S. C., Sec. 137 (g).)

Act of 1917, as Amended in 1940.

SEC. 19. That at any time within five years, after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpi-

tude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution, or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude: at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided*, That the marriage to an American citizen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed

by this Act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act: *Provided further*, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final.

(b) Any alien of any of the classes specified in this subsection, in addition to aliens who are deportable under other provisions of law, shall, upon warrant of the Attorney General, be taken into custody and deported:

(1) Any alien who, at any time within five years after entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

(2) Any alien who, at any time after entry, shall have on more than one occasion, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien or aliens to enter or to try to enter the United States in violation of law.

(3) Any alien who, at any time after entry, shall have been convicted of possessing or carrying in violation of any law any weapon which shoots or is designed to shoot automatically or semi-automatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun.

(4) Any alien who, at any time within five years after entry, shall have been convicted of violating the provisions of title I of the Alien Registration Act, 1940.

(5) Any alien who, at any time after entry, shall have been convicted more than once of violating the provisions of title I of the Alien Registration Act, 1940.

No alien who is deportable under the provisions of paragraphs (3), (4), or (5) of this subsection shall be deported until the termination of his imprisonment or the entry of an order releasing him on probation or parole.

(c) In the case of any alien (other than one to whom subsection (d) is applicable) who is deportable under any law of the United States and who has proved good moral character for the preceding five years, the Attorney General may (1) permit such alien to depart the United States to any country of his choice at his own expense, in lieu of

deportation, or (2) suspend deportation of such alien if not racially inadmissible or ineligible to naturalization in the United States if he finds that such deportation would result in serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child of such deportable alien. If the deportation of any alien is suspended under the provisions of this subsection for more than six months, all of the facts and pertinent provisions of law in the case shall be reported to the Congress within ten days after the beginning of its next regular session, with the reasons for such suspension. The Clerk of the House shall have such report printed as a public document. If during that session the two Houses pass a concurrent resolution stating in substance that the Congress does not favor the suspension of such deportation, the Attorney General shall thereupon deport such alien in the manner provided by law. If during that session the two Houses do not pass such a resolution, the Attorney General shall cancel deportation proceedings upon the termination of such session, except that such proceedings shall not be canceled in the case of any alien who was not legally admitted for permanent residence at the time of his last entry into the United States, unless such alien pays to the Commissioner of Immigration and Naturalization a fee of $18 (which fee shall be deposited in the Treasury of the United States as miscellaneous receipts). Upon the cancelation of such proceedings in any case in which such fee has been paid, the Commissioner shall record the alien's admission for permanent residence as of the date of his last entry into the United States and the Secretary of State shall, if the alien was a quota immigrant at the time of entry and was not charged to the appropriate quota, reduce by one the immigration quota of the country of the alien's nationality as defined in section 12 of the Act of May 26, 1924 (U. S. C., title 8, sec. 212), for the fiscal year then current or next following.

(d) The provisions of subsection (c) shall not be applicable in the case of any alien who is deportable under

(1) the Act of October 16, 1918 (40 Stat. 1008; U. S. C., title 8, sec. 137), entitled "An Act to exclude and expel from the United States aliens who are members of the anarchist and similar classes", as amended; (2) the Act of May 26, 1922, entitled "An Act to amend the Act entitled 'An Act to prohibit the importation and use of opium for other than medicinal purposes', approved February 9, 1909, as amended" (42 Stat. 596; U. S. C., title 21, sec. 175); (3) the Act of February 18, 1931, entitled "An Act to provide for the deportation of aliens convicted and sentenced for violation of any law regulating traffic in narcotics", as amended (46 Stat. 1171; U. S. C., title 8, sec. 156a); (4) any of the provisions of so much of subsection (a) of this section as relates to criminals, prostitutes, procurers, or other immoral persons, the mentally and physically deficient, anarchists, and similar classes; or (5) subsection (b) of this section.

(Act of February 5, 1917, C. 29, Sec. 19, 39 Stat. 889, as amended by Act of June 28, 1940, C. 439, Sec. 20, 54 Stat. 671; 8 U. S. C. Sec. 155.)

No. 2.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

WILLIAM SCHNEIDERMAN,

Petitioner,

v.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

REPLY BRIEF FOR PETITIONER.

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REPLY BRIEF FOR PETITIONER.

Boiled down, the Government's whole contention is that the petitioner's mere membership in the Communist Party, in and of itself, disqualified him for naturalization. In any event, the Government asserts, such membership and the amount of the activity of the petitioner from the age of 16 to 21 as such member warrants imputing to him as his own beliefs all of the views or expressions set forth in Communist writings, even to the extent, by such imputation, of giving the lie to his own testimony as to his beliefs. By thus imputing to petitioner a belief in and advocacy of the views, prophecies and perfervid rhetoric set forth in the writings of various individuals, many published subsequent to his naturalization, and many of which he had never seen, (e. g. Exhs. 13, 14, 26 and 27. R. 248, 249, 254, 255, 273, 274-276) the Government builds up an unreal Frankenstein monster of disloyalty and perjury between which and the petitioner, as a boy of 21, no resemblance can be seen.

I. The Government's brief is replete with inconsistencies, exaggerations, and misuse of the record.

At the outset, the Government concedes, in effect, that mere membership in the Communist Party is not sufficient to sustain the finding of illegal naturalization. The brief agrees that the writings of party members cannot be imputed to the party and then, by this channel, imputed to a party member unless the member in question is an active (rather than a mere "rank and file") member of the party (Gov. Br., p. 26). *But*, later in their brief, the Government asserts that, with certain irrelevant exceptions, "mere • • • membership" in the Communist Party "without more is enough" (Gov. Br., p. 120). "Mere proof of membership in the Communist party is sufficient to show" (Gov. Br., p. 120 footnote) (1) lack of allegiance, (2) membership in an organization believing in force and violence and (3) membership in an organization believing in or opposed to organized government and (4) "lack of attachment to the Constitution".

Further. Having, as above stated, propounded the view that only active members in the party may have imputed to them practically anything that any Communist may have written or spoken at any time (Gov. Br., p. 26)—in order to establish the requisite activity of petitioner, the Government clearly misstates, in many respects, his activities as a boy of 16 to 21, and grossly exaggerates it in others. For example, throughout their brief they persistently state that petitioner "taught" the Communistic doctrines set forth in certain writings (Gov. Br., pp. 5, 14, 59, 86 and 88). As we shall show hereafter, up to the time he was naturalized, young Schneiderman had never been a teacher. Furthermore, they claim that "as an intelligent and educated indi-

vidual, he became *a leader* of these organizations *as an intellectual revolutionary*" (Gov. Br., p. 26; italics ours). (See also Gov. Br., p. 121.) This is a gross exaggeration of the activities of this inconspicuous boy of 16 to 21, then working his way through high school and college. (See pp. 6-7, *infra.*)

Further. The Government with propriety "emphasizes" that the "relevant period"—"the critical time"—is the period up to the naturalization of Schneiderman in 1927. (Gov. Br., p. 23.) They try to borrow some time beyond 1927 by using the phrase "up to and about 1927, when petitioner was naturalized" (Gov. Br., p. 23). Of course, the question of the legality of this naturalization must be determined upon the basis of the facts as they were at the time of naturalization. Notwithstanding this, a substantial portion of the literature upon which the Government relies is literature which was written subsequent to 1927. Notwithstanding the statement in the Government's brief that "only that earlier period is intended to be included in our discussion" (Gov. Br., p. 23), if all references to literature published subsequent to 1927 and the arguments based thereon were stricken from the Government's brief, its proportions would be greatly diminished (See Appendix I hereto for analysis of literature).

Further. Most of the activities of the petitioner as a party member upon which the Government relies as a basis for claiming the right to impute to the petitioner what other men wrote are activities *subsequent to 1927* (See Gov. Br., pp. 5, 6).

Further. A substantial portion of the quotations from and the references to documents upon which the Government relies are quotations and references to portions of the documents which are not in the printed record. We have

found at least *360* of these quotations and references (See Appendix II hereto). If these were eliminated from its brief, the task of the Court and of opposing counsel in getting at relevant material would have been greatly lightened.

Further. The Government's brief has many quotations which in and of themselves and separated from their context seem to have the purport which the Government gives to them, but when read in their context are found to apply only to particular conditions in Russia or other parts of continental Europe with which the author was then dealing, or to have a different meaning from that sought to be given by the Government to the excerpt quoted. For example, the "Manifesto of the Communist Party" deals with conditions in continental Europe in 1848, prior to the 1848 revolution (R. 124, 878, 879), and "The Theory and Practice of Leninism" deals with Russia and the revolution in that country (R. 212, 879).

Further. One of the documents to which reference is made at least 78 times in the Government's brief, and the appendices thereof (see right hand column in our Appendix II hereto) and upon excerpts from which a great deal of stress is laid, was not in evidence in the case at all and no part thereof appears in the printed record (Gov. Exh. 26 for identification, R. 274). Government counsel at the trial asked petitioner if he knew the document, and, in so doing, prefaced his question with the statement, "Now, referring to Exhibit No. 26 in evidence * * *" (R. p. 835). In so prefacing his question, the Government counsel at the trial was in error. This exhibit was never in evidence. This exhibit is in fact, the Government's chief reliance. Further, this exhibit is a document as to which the Government's own witness stated that it was not "widely circulated or sold" (R., p. 274). If the quotations from, references to,

and arguments based on this Exhibit 26 were stricken from the Government's brief, it would be left in shreds.

II. The Government's brief does not deal in realities.

If this case had to do with the legality of a naturalization, let us say in the year 1935, of Lenin or Trotsky, then most of the quotations from the documents and the Government's arguments based thereon might be pertinent. But as applied to the naturalization in 1927 of this inconspicuous boy, then 21, they are entirely irrelevant.

The Government's brief does not deal in realities. It tries to obscure the basic fact that the case has to do with an unimportant boy of 21 and that it is, in last analysis, only by virtue of his mere membership in the Communist Party that they now seek to void his naturalization of many years standing.

The Government completely ignores the significance of the petitioner's unblemished record as a peaceful and law-abiding member of the community. There is no charge that he ever was arrested or broke the peace or the law. There is no charge that there was a plain, flagrant violation in any respect of the naturalization laws. There is no charge that his youthful activities as a member of the Communist Party were in any way secret—the fact is, they were quite open. There is no shred of immediate direct evidence of belief by him in prohibited principles.

One would think that in order, after twelve years, to upset the judgment of the naturalization court on the ground that it was illegally obtained, some very clear, direct, positive and incontrovertible proof should be forthcoming demonstrating the illegality. Yet the Government takes 128 pages of brief to seek to demonstrate this illegality,

filled with fine spun arguments addressed solely to the proposition which the Government says is the only question in the case, to wit: "whether there is sufficient evidence to support the *findings of the district court*" (Gov. Br., p. 2). (Italics ours.) [In passing, it is the determination of the Circuit Court of Appeals, and not the findings of the District Court, that are on review in this Court.] On the face of things, there must be something wrong if it takes 128 pages to demonstrate that the inconsequential activities of this boy of 21 as a member of the then Communist Party in America and the unproven beliefs with which he is charged disqualified him to become a citizen of the United States within the limitations upon naturalization then imposed by the statutes.

The case boils down to what was the behavior of the Petitioner at the age of 21 and what did he then believe? His behavior (his activity) we detail below.

In 1922, then a boy of 16, he became a charter member of the Young Workers' League, and a so-called "educational director" thereof, a position which he held for about two or three years (R. 86, 87, 89, 357). He joined the League with the idea of studying what the principles of Communism had to say about the conditions of society as he saw them (R. 357).

As educational director his only duties were to organize classes to study Marxism and the political and educational situations in the different countries, and to send out notices of meetings (R. 87, 359, 360). It does not appear how successful he was in organizing these classes. He did not teach any of these classes or even arrange the curriculum of study and received no salary for his work (R. 88, 89, 359). When the Government refers to him as a teacher it makes a misstatement (Gov.'s Br., pp. 5, 14, 59, 86, 88). At the time of his naturalization, he held no official position in the League

although he was still a member thereof (R. 91). He never attended any Congresses of the Young Communist International (R. 90).

He became a member of the Workers' Party at the end of 1924 or beginning of 1925. This organization later changed its name to the Workers' Communist Party and then to the Communist Party of the United States (R. 91).

During 1925 and 1926 he was the secretary of the Workers' Party in Los Angeles, his duties being merely to keep the minutes and send out communications for meetings. It was not an executive position but purely a clerical job (R. 92. 175, 358, 359).

He attended conventions of the Young Workers' League as a delegate in 1922 and 1924 and attended a convention of the Workers' Party in 1925 *but not as a delegate* (R. 96, 97).

It would be a monstrous injustice, twelve years after naturalization, to take away the citizenship of this man whose whole conduct had been above reproach by first imputing to the Communist Party of Russia an adherence to everything that any writer or Communist dealing mainly with *Russian* conditions may have said in the fervor of his advocacy, and then imputing adherence to these pronouncements to the Communist Party of America by virtue of whatever theoretically strong, but factually weak, connection there may have been between the Communist International and the American party, and then imputing this whole body of material to an insignificant boy of 21 living in Los Angeles.

III. Specific answer to the Government's points.

A. Alleged false oath of allegiance.

The Government contends that the Petitioner made a false oath of allegiance because of:

(a) "Petitioner's subjection to primary political control and discipline of the Communist Party and of the Third Communist International". (Discussed Gov. Br., pp. 28-45); and

(b) "Also on the basis of fundamental communist precepts, petitioner was lacking in allegiance to the United States" (Gov.'s Br., pp. 45-46).

These contentions are, we submit, without merit. No matter how rigid the discipline of the Communist Party may have been designed to be or how theoretically subservient the Communist Party of America may have been to the Communist International, these organizations, at most, were mere political parties and were not "princes, potentates, states or sovereignties" to whom only, allegiance was to be foresworn under the naturalization law then in effect (see Petitioner's Main Brief, pp. 8, 9, 18-22).

"Allegiance" is generally defined as the relation or obligation of a citizen to his *sovereign* or of an alien to the government under which he resides (Webster's Standard Dictionary) *not to any form of political party*, and this definition has been accepted generally by the Supreme Court of the United States. *United States* v. *Wong, Kim Ark*, 169 U. S. 649, 659 (1898) and *Carlisle* v. *United States*, 83 U. S. 147, 154 (1872).

Moreover, the evidence relied upon (all documentary) fails to establish that in fact and in reality there existed any such discipline and subservience as claimed. Practically the only pertinent, prior-to-1928 evidence upon which the Government relies to sustain its claim of rigid political control is a quotation from the "Statutes, Theses and Conditions of Admission to the Communist International" (Gov. Ex. 26, R. 274), but, as stated, this document is not in evidence (R. 274). See p. 4, *supra*. The excerpt there-

from which is relied on is that: "Any *delegate* who in one way or another does not submit absolutely to the Party shall be expelled from the ranks of Communism" (Gov. Br., p. 30). This quotation obviously does not prove the case. Much weight is also given by the Government (Gov. Br., pp. 35-37) to the "Program of the Communist International" (Ex. 6), but this was adopted in 1928, after the "relevant period."

The evidence referred to by the Government at pages 41-44 of its brief to show subservience is almost entirely outside of the Record (See Appendix II hereto).

The Government's own compilation of the history of the Party shows that this endeavor of the Communist International to control party regularity and orthodoxy of its members was so ineffective that in 1928 an International Control Committee was appointed to try to give it some potency (Gov. Br., pp. 37, 138, note 116).

In any event, the fact that one belongs to an organization, be it a church, a peace society, an English-Speaking Union, or a political party, which has its principles established by some central authority located abroad to which principles a member agrees to give adherence on penalty of expulsion for lack of orthodoxy is clearly not proof of lack of allegiance to the United States.

But, as the Petitioner himself testified, though the Communist Party of the United States and the Communist International were affiliated, "the question of the statutes became an academic question related to the field of theory", and the American Party's affiliation with the International "took place under the express provision that we are not subject to and exempt from the 21 conditions of admission" (R. 380, 831-2. See Gov. Br., pp. 38-9).

In this connection occurs another instance of the gross exaggeration to which the Government resorts in its en-

deavor to sustain the decree below, when they refer to the Petitioner as being "so active a member and leader of these organizations that his political loyalties at the time of his naturalization were wholly pledged by him to the Communist Party and to the Third Communist International" (Gov. Br., p. 45).

With respect to their second reason for claiming lack of allegiance, to wit, "On the basis of fundamental Communist precepts" (Gov. Br., pp. 45-46), the evidence utterly fails to prove the case. Reliance is first placed on pages 125 and 126 of Exhibit 16 (see Gov. Br., p. 46). These pages are not in the record. Further, the Exhibit from which they are quoted, to wit, the "A B C of Communism", was never accepted as an authorized version of Communism and the book was rejected as being an improper exposition of the theory of Communism (R. 163-164, 834-835).

The next reference is to page 28 of the Communist Manifesto written by Marx and Engels in 1848 (see R. 125) which contains the statement that "The workingmen have no country. We cannot take from them what they have not got." But this was followed with the statement that the "Proletariat * * * must rise to be the leading class of the nation, must constitute itself the nation",—a seemingly harmless pronouncement.

The next reference is to page 45 of Exhibit 10 (Gov. Br., p. 46), but this page is not in the record (see Appendix II).

The next reference is to Exhibit 26 for Identification, but, as stated above, this Exhibit is not in evidence nor is any part printed in the record.

The next reference is to pages 12-13 of Exhibit L (R. 464), which are not in the record, this Exhibit being in the form of a letter to American workers by Lenin.

Reliance is also placed on an excerpt from an acceptance speech of William Foster made in 1928, to wit, after the relevant period (see Gov. Br., p. 47). It is not in the record and petitioner testified that he had never seen it (R. 158).

Except for the innocuous statement from the Communist Manifesto of Marx of 1848 quoted above, all the rest of the statements relied upon and which to us seem to fail to prove the contention, are not to be found in the record or are subsequent to the relevant period.

We cannot permit to pass unchallenged a statement contained at page 8 of the Government's brief, and repeated in substance at page 11. The statement at page 8 of the Government's brief is that "The program of the Communist International and the resolutions of the United States section were to the effect that in the event of hostilities with Soviet Russia the first allegiance of party members was to be towards U. S. S. R. (R. 117 to 119, 245-246)." "The program of the Communist International" to which reference is made was adopted in Moscow in 1928, we presume by a lot of Russians. In any event, it could have no bearing on the legality of the petitioner's naturalization in 1927. The alleged "resolutions of the United States section" to which reference is made, clearly do not have any such interpretation as that sought to be given to them (R. 245-246).

The Petitioner testified without qualification that in the event of a war between the United States of America and the Union of the Soviet Republic he would be willing to bear arms on behalf of the Government of the United States against Soviet Russia. He said: "I believe that is one of the obligations of citizenship" (R. 886, 887).

The Government is apparently not satisfied with the validity of the grounds upon which the Court below deter-

mined that the Petitioner had taken a false oath of allegiance. The Court below found a false oath not on any of the grounds relied upon by the Government in its brief and discussed above, but merely upon the basis that because of his membership in the Communist Party there would be imputed to the Petitioner a belief in principles which the Court held to be contrary to the "views of the Constitution" (R. 915). The Communist principles thus imputed to the Petitioner by the Court below and held by that Court to be contrary to the views of the Constitution are entirely different from the "fundamental Communist precepts" to which the Government refers to at pages 45 and 46 of its brief (See R. 916).

The Court below evidently considered that the belief—which it imputed to Petitioner—in the overthrow of this Government by force and violence affected the validity of the oath of allegiance. The Government, however, in its brief, treats the alleged belief of Petitioner in the use of force and violence as one of the elements affecting his "attachment" to the principles of the Constitution (See Gov. Br., p. 60). Accordingly, we shall deal with this matter of force and violence under that heading.

B. The Petitioner's behavior.

The Government devotes the major portion of its brief to the question of the Petitioner's behavior (Gov. Br., pp. 53 to 110). It is noteworthy that the Court below did not find any illegality in petitioner's naturalization arising from any alleged failure to behave as a person attached to the principles of the Constitution. As already stated, the Court below placed its affirmance of the District Court solely on the ground of the falsity of the oath of allegiance. Since the proceeding before this Court has for its object the review of the decision of the Court below and not that

of the District Court, we might, therefore, with propriety, object to any consideration of arguments dealing with the question of behavior or attachment to the principles of the Constitution. In any event, it is to be noted that the Government apparently feels that it would be on weak ground if it sought to sustain the decree of the Court below on the basis on which that Court placed it.

The statute, at the time of petitioner's naturalization, provided that "it shall be made to appear to the satisfaction of the court * * * that immediately preceding the date of his application, he has resided continuously within the United States five years at least * * * and that during that time, he has *behaved as a man* of good moral character *attached to the principles* of the Constitution of the United States and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character and attachment to the principles of the Constitution shall be required * * *." (Italics ours.) (See Petitioner's Main Brief, pp. 8-9.)

Now it did appear "to the satisfaction of the Court" in admitting Petitioner to citizenship, that he had behaved as a man attached to the principles of the Constitution. The requisite two witnesses were provided. But, says the Government, although his external behavior had seemingly been in every respect exemplary, he had not in fact behaved properly because he had been guilty of membership in the Communist party and had some activity therein; and further, says the Government, the test of behavior is subjective as well as objective, that is to say, the Petitioner must, in fact, in his mind and in his belief have been attached to the principles of the Constitution.

While it is clear that the test of "behavior" laid down by the statute is objective and not subjective, and while under the recent case of *Kessler* v. *Strecker*, 307 U. S. 22, the statute must be taken as it is, to wit, as establishing an objective test only, and not as it might be, we submit that petitioner's belief in those Communist principles to which he gives adherence does not demonstrate even subjective lack of attachment to the principles of the Constitution.

Within the requirement of attachment to the principles of the Constitution, the petitioner had, we submit, a right to believe in and advocate changes in the Constitution, no matter how radical and fundamental, so long as they were to be accomplished by the peaceful process of amendment. There is no validity to the Government's contention that one cannot be attached to the principles of the Constitution unless he believes in the continuance of the existing framework of the Government and the so-called basic principles of the Constitution and its "general political philosophy." (See Government's Brief, p. 103). We assert that the following language from the dissenting opinion of Mr. Justice Holmes in the case of *United States* v. *Schwimmer*, 279 U. S. 644, 654, correctly states the law on this question, reading as follows:

> "• • • if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate. I think that we should adhere to that principle with regard to admission into, as well as to life within, this country."

This is particularly true since the decision of this Court in the *National Prohibition Cases*, 253 U. S. 350 (1920) and the case of *Bridges* v. *California*, 314 U. S. 252. (See our Main Brief, Point II, pp. 25-27.)

The Government itself admits that an alien about to be naturalized may justifiably have beliefs in a certain amount of change and improvement in the Constitution. The Government says:

> "We do not contend, of course, that, to achieve citizenship, an alien must insist on the maintenance of the *status quo* or believe that improvement is impossible. He may think that the laws and the Constitution should be amended in some or many respects" (Gov. Br., p. 104).

Who is to determine at what point belief in changes to be accomplished by peaceful methods pass from the permitted into the forbidden? Is it to vary from time to time with the attitude of a particular court and the temper of the times? We say, let Congress determine by clear enactment.

The Government's brief lays so much stress on the allegedly advocacy by the Communist Party and by the Petitioner of the overthrow of the Government of the United States by force and violence as constituting evidence of lack of attachment to the principles of the Constitution that it perhaps deserves special consideration (Gov. Br., pp. 60-94). We respectfully submit that the point is without merit.

There is, we submit, a clear failure of proof on this point. Here again, the proof consists almost entirely in the attempt to impute to the Petitioner as a boy of twenty-one the writings of various members of the Communist Party mostly resident in Europe and dealing with European conditions; and here again the proof to a large degree consists of excerpts from writings and documents published subsequent to the plaintiff's naturalization (see, e. g., quotation from "Why Communism", published in 1935) (Gov. Br., p. 62); and consists in part even from a quotation from the

"Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26. See Gov. Br., p. 63), which exhibit is not in evidence.

With respect to the proof designed to show the advocacy by the Communist Party itself of the overthrow of governments by force and violence, the Court below, as the Government points out in its brief, observed (R. 917) that there were "sharply conflicting views" among Communist writers with respect to the advocacy of force and violence. Further, the Government, in its brief, admits that on the issue of the advocacy of the overthrow of the government by force and violence, the programs and doctrines upon which it relies are of an ambiguous character. It states this negatively by stating that, "except for this issue," their other arguments are based on programs and doctrines of "unambiguous character" (Gov. Br., p. 61). Dealing with this conflicting evidence admittedly of ambiguous character, the Government then urges what it characterizes as "a proper and sensible *interpretation*" (Gov. Br., p. 61). It thus appears that at the outset we have to deal with inconclusive, admittedly "conflicting" evidence, of such an ambiguous nature that it requires "interpretation", as to what the Communist Party itself believed on this subject, before the chain of imputations can be forged which will charge this boy of twenty-one with advocacy of the overthrow of the Government of the United States by force and violence.

It is clear that most of the documents relied upon were written by Russians with a view to Russian conditions in former times, and cannot in fairness be deemed to have been directed toward the advocacy of the use of force and violence for the overthrow of the Government of the United States.

The argument made by the Government that irrespective of his membership in the Communist Party "petitioner's

own beliefs in respect of force and violence disqualifies him" (Gov. Br., p. 82) is too unsubstantial to merit comment. It is not supported by the proof. The Government's contention that "in any event even if the Petitioner did *subscribe* to the interpretation for which he contends, he nevertheless *taught* a different interpretation which embodies force and violence" (Gov. Br., p. 86) (Italics in original) is also absolutely without support in the proof. It illustrates the length to which the Government is forced to go in its endeavor to sustain the decree below. At no time prior to 1927 was the Petitioner a teacher. Under this heading the Government goes so far as to say—without warrant—"petitioner was an active participant in and a leader of the Party; further he *participated in the formulation of some*, and in the dissemination of much, of this literature" (Gov. Br., p. 88) (Italics ours). There is not a shred of evidence that the Petitioner participated in the formulation of any "of this literature."

At the time of the naturalization of Petitioner, there was no express provision in the naturalization law that persons who belonged to an organization which advocated or taught the overthrow by violence of the Government of the United States or who distributed the literature of such an organization could not be naturalized. Provisions of this character did not appear in the naturalization statute until the year 1940, although the naturalization statute had been amended three times in the period between June 1906 and June 28, 1940. But says the Government, the deportation act of 1920 which authorized the deportation of an alien who belonged to an organization which advocated the use of force and violence or who merely distributed its literature, must be imported into the naturalization act of 1906 (Gov. Br., p. 81). This is a novel contention. We do not think that it is sound.

The Government assumes that, in 1927, membership in the Communist Party in and of itself rendered an alien deportable, as constituting membership in an organization believing in or advocating the overthrow of government by force and violence. In this we think they are wrong. In the case of *Strecker* vs. *Kessler*, 95 Fed. (2d) 976 (C. C. A. 5th Cir. 1938), the court held that mere membership in the Communist Party of America, standing alone, was not sufficient to warrant deportation. This case was affirmed on other grounds by the Supreme Court of the United States, 307 U. S. 22. Furthermore, in the deportation cases the statutes made the decision of the Secretary of Labor "final" (8 U. S. C. Sec. 155).

By the Act of March 3rd, 1903 (32 Stat. 1213, 1214, Chap. 1012, Sec. 2) Congress directed the exclusion from admission into the United States of "polygamists, anarchists or persons who believe in or who advocate the overthrow by force or violence of the Government of the United States or of all government or of all forms of law, or the assassination of public officials" and, by Section 21 of that Act, Congress provided for the deportation *within three years after entry* of any person found in the United States in violation of the Act. Why, three years later, Congress, in passing the Act of June 29, 1906 (chap. 3592, Sec. 4, 34 Stat. 596), selected as disqualifications for naturalization some of the bases for exclusion contained in the exclusion and deportation statute of 1903, but did not specifically include as a disqualification for naturalization any direct reference to the advocacy of force and violence, we do not know. The fact is that it did not.

The fact that Congress was apparently content to allow an alien to remain in the country who was an anarchist and who advocated the overthrow by force and violence of

the Government if he had been here for three years or more, may have been the reason that Congress set up, as a test for naturalization, proof of behavior during a five year period of residence so that even an anarchist could by his objective behavior during five years demonstrate his attachment to the principles of the Constitution.

It may well have been that Congress felt that in the requisite five year period of residence before naturalization that the anarchist at whom the exclusion act of 1903 was addressed would have acquired "a taste for our kind of government" (See Gov. Br., p. 106; also footnote to Gov. Br., p. 125). In any event, since under the 1903 statute even an alien who believed in the overthrow of the Government by force and violence could not be deported after three years from the date of entry, Congress may well have felt that, given two years more of residence, there was no reason why it should make the test for naturalization of a non-deportable alien as severe as the requisites for entry.

And we do not know why Congress when it passed the exclusion acts of 1918 and 1920 (which by their title were expressly aimed at "anarchists") did not then amend the naturalization law. But it did not.

If further evidence were needed that the deportation statutes of 1918 and 1920 were not intended by Congress to be and should not, therefore, be imported into the naturalization act of 1906 in effect at the time of the Petitioner's naturalization in 1927 (see Petitioner's Main Brief, pp. 36, 37) it should be noted that in 1940, in adopting a practically new naturalization statute Congress then, for the first time, provided that:

> "No person shall *hereafter* be naturalized as a citizen of the United States——
>
> • • • • • •

(b) Who * * * advocates, or teaches, or who is a member of or affiliated with any organization, * * * that believes in, advises, advocates, or teaches—

(1) the overthrow by force or violence of the Government of the United States * * *

* * * * * *

(c) Who * * * circulates, distributes * * * printed matter advising, advocating, or teaching * * *

(1) the overthrow by force or violence of the Government of the United States * * *." (Italics ours.)

(See Appendix III) (Act of Oct. 14, 1940, c. 876, Title I, subchapter III, Sec. 305, 54 Stat. 1141; 8 U. S. C. 705).

Thus, in 1940, Congress expressly provided that those grounds of exclusion contained in the 1918 and 1920 exclusion statutes, which the Government contends should be imported into the 1906 naturalization law, should only be applicable "hereafter" as disqualifications for naturalization.

Under the recent case of *Kessler* v. *Strecker*, 307 U. S. 22, the naturalization and deportation statutes, must be taken as they are or were, and not as they might well have been. These statutes are to be given a strict interpretation.

Consequently, it would not be proper to import into the naturalization statute in effect in 1927 the provisions of the then existing deportation statute and thereby, as the Government contends (Gov. Br., pp. 13, 80-82) reach the novel conclusion that petitioner was illegally naturalized because, perhaps, he might have been deportable.

We do not contend that if the Petitioner at the time of his naturalization had in fact advocated the overthrow

of the Government of the United States by force and violence he would have been entitled to be naturalized. We do not believe that such advocacy is consonant with a true oath of allegiance. A man cannot well intend to obey a government, the overthrow of which by force and violence he is advocating.

We do say that in the case of this Petitioner, whose behavior, both before and since naturalization, has been above reproach (unless, as the Government contends, mere membership and some minor activity in the Communist Party is a reproach), who has given no evidence except such membership in the Communist Party of any belief in or advocacy of the overthrow of this Government by force and violence, but on the contrary has by his conduct evidenced a lack of belief in such measures, who specifically testifies that he does not believe in such measures, whose party platform, when at last formulated in 1938, forbids such measures,—we do not believe that this man should have his citizenship taken away from him on the basis of imputing to him admittedly conflicting views of party writers and admittedly ambiguous expressions of writers requiring "interpretation". Such proof, we say, is an utterly insufficient basis for taking his citizenship away from this Petitioner.

C. The petitioner's disbelief in and membership in an organization disbelieving in organized government.

Here again the Government is urging a ground of disqualification not relied upon by the Court below.

Of course, historically considered, the requirement for naturalization that Petitioner should not be a disbeliever in or a member of an organization teaching disbelief in or opposed to organized government as it appears in the Naturalization Statute of 1906 was designed to exclude an-

archists from naturalization. Communists had not then been heard of. Of course, there is a distinct difference between the tenets of Communism and the preachings of anarchy.

Contrary to Petitioner's own testimony that he actually believed in organized government (R. 363) the Government's entire proof consists of imputing to him stray expressions found in a few of the documents introduced, which do not, we submit, sustain the contention.

The first document to which the Government refers is page 31 of Exhibit 11, found at Record 214 (see Gov. Br., p. 112). The first sentence of this excerpt reads:

> "The dictatorship of the proletariat is not a change of ministry, but a new State, with new State and local organs. The State of the proletariat shall rise on the ruins of the old State of the bourgeoisie."

This excerpt would seem to indicate a belief in an organized government.

The next reference in the Government's brief is to page 60 of the "A B C of Communism", Exhibit 16. As we have previously shown, this particular document had no currency and was subsequently barred from use. The excerpts certainly do not sustain the view that even the author of this non-authoritative book was opposed to organized government. For example, reading from page 60 (see R. 189) the author of the "A B C of Communism" said:

> "The proletariat state is necessary till, in the fully developed Communist system there is left no trace of capitalism. The proletariat state will disappear with the last remnants of the capitalist system. • • • After twenty or thirty years a new world will appear in which there will be other men and other manners."

The next reference found in the Government brief is to page 45 of Exhibit 26 which, as we have shown, was not introduced in evidence.

The next reference made is to page 13 of Exhibit 18, a document entitled, "The State and Revolution", found at page 134 *et seq.* of the record (see Gov. Br., p. 112). In this excerpt, the author is explaining the vital difference between anarchists and Communists, showing that anarchists want an immediate overthrow of all organized government and are opposed to all organized government, whereas the Communist concept of the development of society was that "when the State really becomes the representative of the whole of society" (instead of the representative merely of the capitalists) "it will make itself superfluous" (R., p. 135). In that Utopian day, after society has passed through the "proletariat form of the 'state'" which "is then an absolutely complete democracy" (R. 138), it is prophesied that a time will come when "the State in general, that is, a most complete democracy, can only wither away", (R., p. 139) in which day there will be no need for the State. On that glorious day (for which we all might wish), "the authority of the government over persons will be replaced by the administration of things and the direction of the processes of production". If this "administration of things and the direction of processes of production" is not just another type of state, just another type of organized government, such as very largely exists in all capitals today, then what is it?

From this analysis of the proof, it can be said that there is no substantial basis to be found in the literature relied upon for contending that the Communists are opposed to organized government. That Communists, as a party, are officially so opposed must first be established

clearly and definitely before the Petitioner can be charged with opposition to organized government by imputing to him the beliefs of the party in direct contradiction of his own testimony to the contrary.

In summary, we say that this contention that the Petitioner was opposed to organized government at the age of 21 and consequently can now be deprived of his citizenship is too flimsy for words.

Summary.

The burden upon the Government to obtain a revocation of the Petitioner's naturalization in the instant case is, we submit, quite heavy. The Petitioner's papers were in entire conformity with the requirements of the statute. He had, in fact, behaved prior to his naturalization in an exemplary fashion. Subsequent to his naturalization he has behaved in every way in an exemplary fashion. There is no claim that he was ever guilty of violence or the preaching of violence or the inciting to mass action or any other misconduct. All that can be said of him and all that is said of him is that he was a Communist, believing in the general social and political theses of that party. Congress alone could make mere membership in the Communist Party of America a bar to naturalization. It has not only not done so but is apparently unwilling to do so. The only basis upon which the Petitioner should now lose his citizenship is clear and positive proof that in 1927 he personally held the views and advocated the practices which would constitute a disqualification under the 1906 act. The only direct proof as to his beliefs and advocacy is the Petitioner's own testimony, which disproves the Government's case. Failing in direct proof, the Government endeavors

to make a case by a gigantic process of imputation. We submit that in this endeavor, the Government has entirely failed.

We have this astounding result: That for views which may be freely entertained by a native born citizen and party membership which may be proper for a native born citizen, a naturalized citizen may, years after naturalization, have his citizenship taken away from him if the then temper of the times is unfriendly to such views and such party membership and the leanings of the then district attorney in the particular district and of the then court before whom the matter is brought are antagonistic, though Congress, in whom alone the power rests to specify qualifications, has not clearly and distinctly spoken on the subject. In consequence many gross injustices may arise, as in this case.

Conclusion.

The decree of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

Wendell L. Willkie,
Carol King,
Counsel for Petitioner William Schneiderman.

Wendell L. Willkie,
Carl M. Owen,
Howard C. Wood,
of Counsel.

Appendix I.

Analysis of Documents and Literature Cited and Relied Upon by the Government in its Brief.

(a) Prior to 1927.

Documents and literature published or in existence on or prior to the date of petitioner's admission to citizenship in 1927.

1. *Manifesto of the Communist Party*, by Marx and Engels (Ex. 7, R. 123, 124). This document was apparently in existence long prior to petitioner's admission to citizenship, but the edition shown petitioner was published in 1932 according to the Government's own concession (Gov't. Brief, p. 151). Schneiderman testified that he was familiar therewith, that it was the basis of tactics of Communism under the Marxism theory and he believed that these general principles of Marxism, *particularly as they applied to the period in which they were written and the country about which they were written*, were entirely correct and were approved by him at the time he was admitted to citizenship (R. 122, 123). *While this book was in existence and Schneiderman was familiar therewith at the time of his naturalization, his approval was merely of general principles, particularly as confined to the period in which and the country about which the book was written. The writing itself deals with conditions in Europe in 1848* (R. 878-879).

In citing or quoting from said Exhibit, the Government, at least 3 times in its briefs and 6 times in Appendix B thereof, refers to a page or quotation therefrom *not* appearing in the printed record (see Appendix II).

2. *Left-Wing Communism; An Infantile Disorder.* (April 27, 1920, Ex. 9, R. 143, 144). While Schneiderman testified that he was familiar with this book, there is no evidence in the record showing when he first became familiar therewith, nor was he asked nor did he state that he believed in the views and principles therein expressed (R. 143).

In citing or quoting from said Exhibit, the Government, at least 11 times in its brief refers to pages of or quota-

tions therefrom *not* appearing in the printed record (see Appendix II).

3. *Statutes, Theses and Conditions of Admission to the Communist International.* (July 17 to August 7, 1920, Ex. 26, R. 273, 274). According to the record this document was never marked in evidence (R. 274) and therefore cannot be relied upon by the Government. *Despite the fact that this document constitutes no part of the record and no part is printed therein* (R. 274), the Government has cited or quoted portions thereof *at least 61 times in its brief* and *at least 20 times in Appendices B and C thereof* (see Appendix II). Petitioner testified that he had no recollection of this particular edition or of its being sold in the so-called communist bookshops and that he did not believe that this book was ever printed in the United States (R. 835, 836). Hynes, one of the Government's own witnesses, testified that this book was not "widely circulated or sold" (R. 274).

4. *A.B.C. of Communism* (1920-1924, Ex. 16, R. 185-187). While petitioner testified that he was familiar with this book, he was not asked nor did he state when he became familiar therewith, or that he believed or subscribed to any of the views therein expressed (R. 163). He further stated that the book was never accepted as an authorized version, was subsequently barred from use in all of the Communist schools and open forums since the editors were not entirely in agreement with the Communist Party on several questions, that said editors were ultimately expelled from the Communist Party in Russia (R. 163, 164) and said book did not purport to expound the proper theory of Marxism and Leninism (R. 834, 835).

In citing or quoting from this Exhibit, the Government, at least 16 times in its brief and 8 times in Appendices B and C thereof refers to pages or quotations therefrom *not* appearing in the printed record (see Appendix II).

5. *Program and Constitution of the Workers Party of America* (adopted at National Convention in 1921 and amended at National Convention in December 1923 and January 1924, Ex. 27, R. 275, 276). Petitioner testified

that he *was not personally familiar with this Program and Constitution*, but that it probably constituted one of a number of drafts presented to a convention of the Party, *but never finally adopted by the Party*, and that it was his understanding that there was no final adoption of a constitution and program until 1938 (R. 836-839 inclusive). Petitioner was not even a member of the Workers' Party at the date stated as the time of adoption and amendment of this document (R. 860).

6. *The Second Year of the Workers' Party in America* (December 1923 and January 1924, Ex. 13, R. 248, 249). Petitioner testified with regard thereto that he was not familiar with the book or its contents (R. 161) and in fact he had not even joined the Workers Party at the time of the Convention at which the report, embodied in this book, was made (R. 91, 249, 883).

In citing this Exhibit, the Government, at least 21 times in its brief, and at least 18 times in Appendices B and C thereof, refers to pages of said Exhibit *not* appearing in the printed record. (See Appendix II).

7. *Theory and Practice of Leninism* by I. Stalin. (1924-1929, Ex. 11, R. 158-160, 211, 212). Petitioner testified he was familiar with this work but not the particular edition introduced in evidence by the Government (R. 158, 159). He was not asked nor did he state when he acquired such familiarity or whether he subscribed in any way to the views, beliefs or principles therein stated.

In citing or quoting from this Exhibit the Government, at least 20 times in its brief, refers to pages or quotations therefrom not appearing in the printed record. (See Appendix II).

8. *State and Revolution* by Lenin (April, 1924, Ex. 8, R. 127, 128, 129). Although petitioner testified generally that at all times during his membership in any Communist organization he subscribed to the philosophy and principles of Socialism as manifested in the writings of Lenin (R. 102, 103), *he was not asked nor did he state that he had ever read this book* or that he believed in any of the views, beliefs or principles therein pronounced.

In citing or quoting from this Exhibit the Government, at least 22 times in its brief, refers to pages or quotations *not* appearing in the printed record. (See Appendix II). (See Appendix B).

9. *Fourth National Convention Workers Communist Party of America* (1925, Ex. 12, R. 240, 241). Petitioner stated that he was not familiar with this pamphlet (R. 160) but the record shows he attended that Convention though not as a delegate (R. 97).

In citing or quoting from this Exhibit the Government, at least 27 times in its brief and at least 38 times in Appendices B and C thereof, refers to pages or quotations therefrom *not* appearing in the printed record. (See Appendix II).

By way of summary, so far as the record shows, it appears that of the 9 documents or writings in existence prior to or at the time of petitioner's naturalization, he was familiar with only one preceding his admission to citizenship, namely, the "Manifesto of the Communist Party" (R. 122, 123, 124) and that he only believed the *principles and theories* therein enunciated to be correct, *particularly as applied to the period in which and the country about which they were written* (R. 123), *namely, Continental Europe in or about 1848.* Of the remaining 8 documents, petitioner testified that he was not familiar with 5, and as to the 3 he admitted familiarity with, he was not asked nor did he state when he acquired such familiarity, whether before or after admission to citizenship. So far as concerns the remaining 8 documents, he was neither asked nor did he state whether or not he agreed with any of the views, beliefs or principles therein expressed.

(b) Subsequent to 1927.

Documents and literature relied upon by the Government, published or coming into existence after petitioner's admission to citizenship in 1927.

In addition to the above mentioned documents, published prior to 1927, the Government relies heavily in its brief

upon citations and quotations from five remaining documents or writings, all coming into existence *after Schneiderman's admission to citizenship in 1927.* These documents are:

1. *Program of the Communist International.* (September 1928, Ex. 6, R. 103-109). In citing or quoting from this exhibit the Government, at least 27 times in its brief and 2 times in Appendix B thereof, refers to pages or quotations therefrom *not* appearing in the printed record (see Appendix II).

2. *Acceptance Speeches by William Z. Foster and Benjamin Gitlow* (published in *1928*, Ex. 14, R. 254, 255). In citing or quoting from this exhibit, the Government at least 7 times in its brief and 2 times in Appendix B thereof, refers to pages or quotations therefrom not appearing in the printed record. (See Appendix II). Further, petitioner testified that he had never seen the document and was not present at the 1928 Convention of the Party (R. 158).

3. *Platform of the Class Struggle* (published in *1928*. Ex. 15, R. 264). In citing this exhibit, the Government, at least 7 times in its brief, refers to pages thereof not set forth in the printed record. (See Appendix II). In addition, petitioner testified that he was *not* familiar with this book and did *not* attend the Convention at which this Platform was adopted (R. 161, 162).

4. *Program of the Young Communist International* (published in *1929*, Ex. 10, R. 147, 152). In citing or quoting from the exhibit the Government, at least 16 times in its brief and 3 times in Appendices B and C thereof, refers to pages or quotations therefrom not set forth in the printed record (see Appendix II).

5. *"Why Communism?"* (published in *1935*, Ex. 18, R. 165, 166). In citing or quoting from this exhibit, the Government, at least 9 times in its brief and once in Appendix C thereof, refers to pages or quotations therefrom *not* set forth in the printed record (see Appendix II). Further, petitioner testified he was not familiar with this book (R. 165, 166).

Appendix II

(a) List of Citations and Quotations from Exhibits Referred to or Set Forth in the Government's Brief Which do Not Appear in the Printed Record Before this Court and Are Not Part of the Record in this Case.*

	Page Number of Gov't's brief at which citation or quotation appears	Material cited or quoted from exhibits but not appearing in the printed record	References to and quotations from Exhibit 26
1	26	Quote from Ex. 6, p 79	
2	"	Ex. 10, p. 38	
3	"	" " p. 48	
4	29-30	Quote from "Statutes, Theses, and Conditions of Admission to the Communist International" (Ex. 26, pp. 40-41). (This Exhibit not introduced in evidence (R. 274).)	x
5	31	Ex. 11, p. 73	
6	"	Ex. 10, p. 39	
7	"	Ex. 9, p. 29	
8	32	Quote from "Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26, p. 52)	x
9	33	Statement from Ex. 26, p. 5	x
10	"	" " " " p. 42	x
11	"	" " " " p. 5	x
12	"	" " " " p. 31	x
13	33-34	Statements from Ex. 26, pp. 21-22	x
14	33	Quote from Ex. 26, p. 21	x
15	34	Statement from Ex. 26, pp. 27-30	x
16	"	" " " " p. 27	x
17	"	" " " " p. 30	x

* Rule 19, subdivision 6, of the Rules of the Circuit Court of Appeals for the Ninth Circuit provides that the appellant and appellee shall designate the parts of the record upon which they rely, and when so designated "the Clerk shall print those parts only; and the court will consider nothing but those parts of the record * * *". (U. S. Sup. Ct. Rep. Digest Vol. 2 Court Rules, pp. 308, 309.) In this case, the Government in the Circuit Court of Appeals for the Ninth Circuit merely designated the excerpts appearing in the printed record and Government's Exhibits Nos. 1, 2, 3 and 27 (R. 902). The Petitioner in said Court merely designated the excerpts printed in the printed record (R. 903). Hence, the only parts of the original exhibits properly before this Court are those excerpts contained in the printed record which constitutes the entire record on which the case was considered by the Circuit Court of Appeals and the references set forth in this Appendix II, therefore, are not part of the record before this Court.

	Page Number of Gov't's brief at which citation or quotation appears	Material cited or quoted from exhibits but not appearing in the printed record	References to and quotations from Exhibit 26
18	34	Statement from Ex. 26, p. 31	x
19	"	" " " " p. 32	x
20	34-35	" " " " pp. 5-6	x
21	34-35	" " " " pp. 30-31	x
22	35	" " " " p. 31	x
23	"	" " " " p. 7	x
24	36	Statement from the "Programme of the Communist International, Together with the Statutes of the Communist International" (Ex. 6, pp. 88-89).	
25	"	Ibid, pp. 89-90	
26	37	" pp. 91-92	
27	"	" p. 92	
28	"	" p. 91	
29	38	Ex. 13, p. 13	
30	"	" " pp. 56-61	
31	"	" " p. 100	
32	"	Ex. 10, Foreword, p. 10	
33	"	Ex. 12, p. 143	
34	"	" " p. 144	
35	41	Ex. 13, pp. 73-85	
36	"	" " p. 93	
37	"	" " p. 100	
38	"	Ex. 26, Workers' Party foreword, inside front cover	x
39	"	Ex. 13, p. 14	
40	"	" " p. 42	
41	"	" " p. 43	
42	"	" " p. 44	
43	42	" " pp. 56-61	
44	"	" " pp. 73-85	
45	"	" " pp. 100-106	
46	"	" " p. 100	
47	"	" " p. 61	
48	"	" " p. 119	

	Page Number of Gov't's brief at which citation or quotation appears	Material cited or quoted from exhibits but not appearing in the printed record	References to and quotations from Exhibit 26
49	43	Ex. 12, p. 10	
50	"	" " " "	
51	"	" " pp. 19-21	
52	"	" " p. 72	
53	"	" " p. 26	
54	"	" " " "	
55	"	" " " "	
56	43	Ex. 12, p. 64	
57	"	" " p. 70	
58	"	" " p. 67	
59	44	" " p. 96	
60	"	Ex. 15, pp. 26-31	
61	"	Ex. 14, p. 8	
62	45	Ex. 12, pp. 96-98	
63	46	Ex. 16, p. 125	
64	"	" " p. 126	
65	"	Ex. 10, p. 45	
66	"	Ex. 26, pp. 28-29	x
67	"	Ex. L. pp. 12-13	
68	"	Ex. 16, p. 124	
69	"	" " p. 126	
70	"	" " " "	
71	47	Quote from "Acceptance Speeches" (Ex. 14, p. 36)	
72	47-48	Quote from "Statutes, Theses and Conditions of Admission" (Ex. 26, p. 30)	x
73	47	Ex. 15, p. 7	
74	"	Ex. 16, p. 126	
75	48	Quote from "Programme of the Young Communist International" Ex. 10, p. 45)	
76	"	Ex. 10, p. 45	
77	"	Ex. 11 p. 12	
78	"	Ex. 16, p. 114	
79	"	" " p. 117	
80	49	Ex. 26, p. 4	x
81	"	Ex. 9, p. 51	

	Page Number of Gov't's brief at which citation or quotation appears	Material cited or quoted from exhibits but not appearing in the printed record	References to and quotations from Exhibit 26
82	"	Ex. 16, p. 121	
83	"	" " p. 122	
84	"	" " pp. 124-126	
85	"	" " p. 129	
86	"	Ex. 6, p. 6	
87	"	" " p. 20	
88	49	Ex. 11, p. 12	
89	52-53	Quote from "Programme of the Young Communist International" Ex. 10, p. 46)	
90	53	Ex. 12, p. 135	
91	"	Ex. 26, p. 19	x
92	"	" " p. 28	x
93	54	Ex. 6, p. 84	
94	"	Ex. 18, pp. 61-62	
95	"	" " p. 62	
96-97	55-56	Quote from "Statutes, Theses and Conditions of Admission to the Communist International" Ex. 26, pp. 18, 28)	x
98	56	Ex. 9, p. 76	
99	"	Ex. 12, p.94	
100	"	Quote from "Programme of the Communist International" (Ex. 6, p. 83)	
101	"	Ex. 9, pp. 43-44	
102	"	Ex. M, p. 12	
103	"	Ex. 11, p. 64 (quote)	
104	56	Ex. 18, p. 29	
105	57	Ex. 12, p. 107	
106	"	Ex. 14, p. 8	
107	"	Quote from "Statutes, Theses, and Conditions of Admission to the Communist International" (Ex. 26, p. 19)	x
108	"	Ibid, p. 28	
109	57-58	Quote from "A B C of Communism" (Ex. 16, p. 69)	
110	58	Ex. 12, p. 135	

	Page Number of Gov't's brief at which citation or quotation appears	Material cited or quoted from exhibits but not appearing in the printed record	References to and quotations from Exhibit 26
111	62	Quote from "Manifesto of the Communist Party" (Ex. 7, pp. 20-21)	
112	63	Ex. 26, p. 15	x
113	"	" " p. 36	x
114	64	" " p. 47	x
115	64	Quote from "Programme of the Young Communist International" (Ex. 10, p. 43)	
116	"	Quote from "Acceptance Speeches" (Ex. 14, p. 8)	
117	65	Ex. 8, p. 26	
118	67	Quote from "The State and Revolution" (Ex. 8, p. 16)	
119	"	Ex. 14, p. 37	
120	"	Ex. 7, p. 40	
121	"	Ex. 8, p. 44	
122	68	Quote from "The Theory and Practice of Leninism" (Ex. 11, p. 64)	
123	72	Ex. 6, p. 29	
124	"	Ex. 8, p. 63	
125	"	Ex. 16, p. 75	
126	73	Quote from "Why Communism?" (Ex. 18, p. 61)	
127	75	Quote from "A B C of Communism" (Ex. 16, pp. 8-9)	
128	76	Quote from "The 4th National Convention Workers (Communist) Party of America" (Ex. 12, p. 91)	
129	76-77	Quote from "'Left-Wing' Communism; An Infantile Disorder" (Ex. 9, p. 52)	
130	77	Ex. 9, p. 50	
131	"	" " p. 58	
132	"	Ex. 11, p. 57	
133	"	" " p. 60	
134	"	Ex. L, p. 12	
135	"	" " pp. 14-15	

	Page Number of Gov't's brief at which citation or quotation appears	Material cited or quoted from exhibits but not appearing in the printed record	References to quotations from Exhibit 26
136	"	Ex. 6, p. 79	
137	84	Ex. 8, p. 16	
138	"	Ex. 11, p. 64	
139	"	Ex. 26, p. 15	x
140	84	Ex. 26, p. 36	x
141	"	" " p. 47	x
142	"	Ex. 12, pp. 137-138	
143	85	Ex. 10, p. 43	
144	"	Ex. 6, p. 4	
145	86	Ex. 11, p. 29	
146	"	" " pp. 34-36	
147	87	Ex. 26, p. 15	x
148	"	Ex. 10, p. 43	
149	"	Quote from Ex. 8, p. 44	
150	91	Ex. 6, p. 79	
151	"	Ex. 13, pp. 15-26	
152	"	" " p. 55	
153	"	" " p. 105	
154	"	Ex. 26, p. 18	x
155	"	" " pp. 47-48	x
156	"	" " p. 52	x
157	"	Ex. 14, p. 8	
158	"	Ex. 10, pp. 43-44	
159	"	Ex. 12, pp. 9-10	
160	"	Ex. 12, p. 14	
161	"	" " p. 79	
162	"	" " pp. 93-95	
163	"	" " p. 106	
164	"	" " p. 147	
165	"	Ex. 18, pp. 50-51	
166	"	Ex. 15, p. 2	
167	"	" " pp. 63-64	
168	"	Ex. 8, p. 32	
169	"	Ex. 11, p. 55	
170	"	Ex. 26, p. 13	x
171	"	Ex. 10, p. 44	
172	"	Ex. 9, pp. 73-74	

	Page Number of Gov't's brief at which citation or quotation appears	Material cited or quoted from exhibits but not appearing in the printed record	References to and quotations from Exhibit 26
173	"	Ex. 11, p. 25	
174	"	" " p. 64	
175	92	Ex. 26, p. 45	x
176	"	" " p. 52	x
177	"	Ex. 8, p. 32	
178	"	Ex. 26, p. 48	x
179	"	Quote from Ex. 6, p. 80	
180	"	Ex. 13, p. 55	
181	"	Ex. 10, pp. 44-45	
182	"	Ex. 9, p. 65	
183	"	" " pp. 73-74	
184	"	Ex. 11, p. 25	
185	"	Ex. 6, pp. 79-80	
186	"	Ex. 26, p. 33	x
187	"	" " p. 47	x
188	"	Ex. 10, pp. 44-45	
189	"	Ex. 7, pp. 20-21	
190	"	Ex. M, p 25	
191	"	" " p. 29	
192	"	Ex. 11, p. 12	
193	"	" " p. 25	
194	"	Ex. 9, pp. 73-74	
195	"	Ex. 18, pp. 60-61	
196	93	Ex. 6, p. 27	
197	"	" " p. 54	
198	"	Ex. 11, p. 25	
199	"	Ex. 16, pp. 107-108	
200	"	Ex. 10, p. 45	
201	"	Ex. L, pp. 16-17	
202	"	Ex. 26, p. 40	x
203	"	Ex. 13, p. 5	
204	"	Ex. 26, pp. 33-34	x
205	"	" " p. 36	x
206	"	" " p. 44	x
207	"	" " p. 45	x
208	"	" " p. 52	x
209	94	Ex. 15, p. 36	

	Page Number of Gov't's brief at which citation or quotation appears	Material cited or quoted from exhibits but not appearing in the printed record	References to ad quotations from Exhibit 26
210	95	Ex. 6, p. 33	
211	"	" " p. 35	
212	"	" " p. 41	
213	"	Ex. 18, p. 18	
214	"	" " pp. 63-64	
215	"	Ex. 15, p. 36	
216	"	Ex. 26, p. 82	X
217	"	Ex. 6, p. 41	
218	"	Ex. 8, p. 41	
219	"	" " p. 63	
220	"	Ex. 26, p. 11	X
221	96	Ex. 6, p. 35	
222	"	Ex. 26, p. 46	
223	96	Ex. 26, p. 46,	X
224	"	" " pp. 44-45	X
225	97	" " p. 11	X
226	"	" " pp. 44-45	X
227	"	Ex. 8, p. 22	
228	"	" " p. 26	
229	"	" " p. 59	
230	"	Ex. 26, p. 46	X
231	"	Ex. 18, pp. 50-51	
232	"	Ex. 8, p. 25	
233	"	" " p. 26	
234	98	Ex. 6, p. 7	
235	"	Ex. 26, pp. 64-65	X
236	"	" 12, p. 113	
237	"	Ex. 8, pp. 18-19	
238	"	Ex. 26, pp. 5-8	X
239	"	" " pp. 37-39	X
240	"	Ex. 6, p. 93	
241	"	Ex. 11, pp. 67-68	
242	"	" " pp. 72-73	
243	"	Ex. 14, p. 40	
244	106	Ex. 26, p. 64	X
245	"	Ex. 6, p. 35	

	Page Number of Gov't's brief at which citation or quotation appears	Material cited or quoted from exhibits but not appearing in the printed record	References to and quotations from Exhibit 26
246	106	Ex. 15, pp. 58-59	
247	"	Ex. 11, p. 34	
248	"	Ex. L, pp. 20-21	
249	"	Ex. D, p. 13	
250a	112	Ex. 6, p. 29	
251	"	Ex. 26, p. 45	x
252	"	Ex. 8, pp. 42-43	
253	"	" " p. 64	
254	113	Quote from "The State and Revolution" (Ex. 8, p. 43).	
255	"	Ex. 8, p. 56	
256	"	" " p. 82	

Appendix II (Continued)

(b) List of Citations from Exhibits in Appendices B and C of Government's Brief Which Do Not Appear in the Printed Record Before this Court.

	Page Number of Gov't's brief at which citation appears	Material cited from Exhibits but not appearing in the printed record.	References to Exhibit 26
1	134	Ex. 16, p. 121	
2	"	Ex. 7, preface, p. 3	
3	"	" " " " "	
4	"	" " " " "	
5	"	" " " pp. 3-4	
6	"	Ex. 16, p. 121	
7	"	Ex. 26, p. 3	x
8	135	Ex. 7, preface, p. 4	
9	"	" " " " "	
10	"	Ex. 26, p. 3	x
11	"	Ex. 16, p. 121	
12	"	Ex. 26, p. 3	x
13	"	" " p. 4	x
14	"	Ex. 16, pp. 121-124	
15	"	" " p. 129	
16	"	" " p. 135*	
17	"	Ex. 6, p. 6	
18	"	" " p. 20	
19	"	Ex. 16, p. 134	
20	"	" " p. 135*	
21	"	Ex. 26	
22	"	" " p. 4	x
23	136	" " p. 5	x
24	"	" " " "	x
25	"	" " pp. 5-6	x
26	"	" " p. 31	x
27	"	" " " "	x
28	"	" " p. 6	x
29	"	" " p. 8	x
30	"	" " " "	x

* Pages cited in record but not statement referred to by Government.

	Page Number of Gov't's brief at which citation appears	Material cited from Exhibits but not appearing in the printed record.	References to Exhibit 26
31	137	Ex. 26, p. 6	x
32	"	" " " "	x
33	"	" " p. 7	x
34	138	Ex. C, p. 270	
35	139	Ex. 26, Workers' Party foreword, inside cover	x
36	"	Ex. 14, p. 8	
37	"	Ex. 12, cover-title page	
38	"	Ex. C, p. 270	
39	"	Ex. 12, pp. 71-72	
40	"	" " p. 123	
41	"	Ex. 14, p. 9	
42	"	Ex. 13, pp. 56-61	
43	"	" " p. 100	
44	140	Ex. 10, p. 15	
45	"	Quote from Ex. 10, p. 8	
46	"	Ex. 10, foreword, p. 10	
47	141	Ex. 13, p. 123	
48	"	" " p. 127	
49	"	Ex. 12, p. 165	
50	"	" " p. 7	
51	"	" " p. 24	
52	"	Ex. 26, p. 8	x
53	142	Ex. 13, pp. 43-44	
54	"	Ex. 12, p. 78	
55	143	Ex. 26, p. 27	x
56	"	Ex. 12, p. 145	
57	"	" " p. 97	
58	"	Ex. 13, p. 38	
59	"	Ex. 12, p. 54	
60	"	" " p. 152	
61	"	" " p. 156	
62	"	Ex. 13, p. 41	
63	"	Ex. 12, p. 56	
64	"	" " p. 57	
65	"	" " p. 59	
66	"	Ex. 13, pp. 110-117	
67	"	Ex. 12, pp. 152-164	

	Page Number of Gov't's brief at which citation appears	Material cited from Exhibits but not appearing in the printed record.	Reference Exhibit
68	144	Ex. 13, p. 44	
69	"	" " " "	
70	"	" " pp. 110-117	
71	"	Ex. 13, p. 115	
72	"	Ex. 12, pp. 152-164	
73	"	" " p. 156	
74	"	" " p. 157	
75	"	" " p. 151	
76	"	" " p. 153	
77	"	" " p. 21	
78	"	" " back cover	
79	"	" " p. 157	
80	"	" " p. 159	
81	"	" " p. 153	
82	"	" " p. 22	
83	"	" " p. 155	
84	145	" " p. 42	
85	"	" " p. 157	
86	"	Ex. 13, p. 32	
87	"	Ex. 12, pp. 91-92	
88	146	Ex. 26	
89	"	" " inside front cover	X
90	"	Ex. 12, pp. 137-138	
91	"	Ex. 13, pp. 73-79	
92	"	" " pp. 81-85	
93	"	Ex. 12, p. 54	
94	"	" " p. 152	
95	"	" " p. 156	
96	"	Ex. 13, p. 38	
97	147	Ex. 12, p. 54	
98	"	" " p. 152	
99	"	" " p. 156	
100	"	Ex. 13, p. 38	
101	150	Ex. 16, p. 7	
102	"	" " p. 4	
103	"	" " pp. 5-6	
104	151	Ex. 18, back of title page	

Appendix III.

Act of October 14, 1940, c. 876, Title I, subchapter III, Sec. 305, 54 Stat. 1141; 8 U. S. C. 705.

"No person shall hereafter be naturalized as a citizen of the United States—

(a) Who advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that advises, advocates, or teaches opposition to all organized government; or

(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—

(1) the overthrow by force or violence of the Government of the United States or of all forms of law; or

(2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or any other organized government, because of his or their official character; or

(3) the unlawful damage, injury, or destruction of property; or

(4) sabotage.

(c) Who writes, publishes, or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation, distribution, publication, or display any written or printed matter advising, advocating, or teaching opposition to all organized government, or advising, advocating, or teaching—

(1) the overthrow by force or violence of the Government of the United States or of all forms of law; or

(2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government; or

(3) the unlawful damage, injury, or destruction of property; or

(4) sabotage.

(d) Who is a member of or affiliated with any organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (c).

For the purpose of this section—

(1) the giving, loaning, or promising of money or anything of value to be used for the advising, advocacy or teaching of any doctrine above enumerated shall constitute the advising, advocacy or teaching of such doctrine; and

(2) the giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching or affiliation.

The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization is, or has been, found to be within any of the clauses enumerated in this section, notwithstanding that at the time petition is filed he may not be included in such classes."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 2.

WILLIAM SCHNEIDERMAN

v.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

SUPPLEMENTAL BRIEF FOR PETITIONER.

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Of Counsel.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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SUPPLEMENTAL BRIEF FOR PETITIONER.

The Government, in this Court, seeks to sustain the cancellation of Schneiderman's naturalization on the basis of proof that is not in the record and on the basis of charges that were not made against him in the Complaint herein.

The Proof.

1. With respect to what constitutes the record.

In pages 1 to 6 of the Government's Reply Brief it seeks to justify its use of excerpts from exhibits which are not part of the printed record before this Court. This use was criticized in the petitioner's Reply Brief and the

astounding extent of such departure from the record was pointed out in Appendix II to petitioner's Reply Brief.

It is clear that the more than 360 quotations from and references to excerpts from exhibits upon which the Government, in this Court, bases its case almost in its entirety, are not part of the record before this Court. In fact, it was never intended by the Government that such outside excerpts should be considered, even by the trial court, as part of the Government's case against the petitioner.

The governing rule of the Circuit Court of Appeals for the Ninth Circuit is quite clear and categorical. It says (Rule 19, Subdivision 6):

> "The appellant shall * * * designate the parts of the record which he thinks necessary for the consideration thereof * * *. The adverse party * * * may designate * * * additional parts of the record which he thinks material * * *. If parts of the record shall be so designated by one or both of the parties * * * the clerk shall print those parts only; and the court *will consider nothing* but those parts of the record * * *. If at the hearing it shall appear that any material part of the record has not been printed, the appeal may be dismissed or such other order made as the circumstances may appear to the court to require. If the appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper." (Italics ours.)

[The rules of the Circuit Court of Appeals for the Ninth Circuit in this respect are similar to the rules of this Court. See paragraph 9 of Rule 13 of the Revised Rules of the Supreme Court (Vol. 11, U. S. Supreme Court Reports Digest, page 15).]

It is obvious that under this rule the *printed* record before the Circuit Court of Appeals was intended to be

the *entire* record; and the rule plainly stated that the Court would consider nothing but those parts of the record which were so designated and printed.

Pursuant to this rule, both the petitioner and the Government designated the excerpts from exhibits that are now in the printed record and none other. [See paragraph 3 of appellant's designation (Rec. 903) and subdivisions (2) and (3) of the Government's designation (Rec. 902).] It is quite clear that the appellant's final "request for and designation of record" dated October 19, 1940, which is found in the record at page 903, superseded his prior request, dated August 5, 1940, found in the record at page 59, because the record actually printed by the Clerk and used by the parties in the Circuit Court of Appeals was the record printed in accordance with the final designation of the appellant, dated October 19, 1940.

The Government, in its Reply Brief (p. 4), suggests that because the original exhibits in their entirety were filed by the clerk of the court below in the office of the clerk of this Court and certified to as being the original exhibits, the result was to make the entire exhibit a part of the record. Obviously, the certificate of the Clerk of the court below that all of the original exhibits which had been transmitted by him to the clerk of this Court "are the exhibits and all of the exhibits filed in my office" has no bearing on the matter. That certificate shows who has *possession* of the exhibits, not what part of the exhibits are in the record.

Nor is there anything in the contention that the court below, by referring to the fact that the evidence consisted of "books, pamphlets and writings" (Rec. 916, see Government's Reply Brief, p. 4), thereby showed that it was taking into consideration in its opinion excerpts from the

books, pamphlets and writings outside of the excerpts which are part of the record, and, in so doing, was violating the express statement of its own rule that "the Court will consider nothing but those parts of the record" which are printed.

Further, Rule 18 of the court below, to which the Government adverts in its Reply Brief (p. 5) has no bearing on the matter. We are not dealing here with a question of "models or diagrams or exhibits of material", which was the subject matter of Rule 18. Obviously an inventor's models or an engineer's blue print diagram, or an exhibit of cotton cloth or of other material, forming part of the evidence, must be given treatment different from that given to an excerpt from a document. We do not have any evidence of that type in this case.

As a matter of fact, it is clear that the Government never intended to establish its case except upon the excerpts which are printed in the record, which excerpts were specially marked in evidence at the time of the offering of the document in evidence and given a special number with the letter "A". Upon the first offering of one of these books, the following colloquy took place (Rec. 109):

> "(Document marked 'Government's Exhibit No. 6.')
>
> Mr. Hennessy: We have made certain excerpts, Mr. Andersen, from the book which we have offered in evidence for the purpose of convenience, of which we will furnish you a copy for facilitating the examination of the book in the preparation of briefs, *so that you will know what particular part of the book we rely on.* You can select such parts as you desire in your brief.
>
> Mr. Andersen: You are introducing the book in evidence, and will supply us with excerpts?
>
> Mr. Hennessy: Yes.

The Court: Either side may use any part or portion of the book.

Mr. Andersen: We have no objection to that.

(The excerpts from 'Programme of the Communist International' were marked 'Government's Exhibit No. 6A.')" (Italics ours.)

In other words, the Government, at the trial, made it clear to the court and to the defendant Petitioner that the Government relied only on those parts of pamphlets and documents as to which it had made excerpts which it would introduce in evidence and have marked in lieu of using the entire pamphlet or document.

In pursuance of the policy so announced, the Government, at the time of offering in evidence each and every pamphlet, also offered in evidence excerpts therefrom, to be marked by the same number with the capital letter A, excepting only in the case of Exhibit 19 in evidence (Rec. 273) and Exhibit 27 in evidence (Rec. 276). With respect to Exhibit 27, a comparatively short document, the whole Exhibit was printed in the record. With respect to Exhibit 19, it does not appear why the Government's policy of offering excerpts only was departed from, but apparently the Government did not place any reliance on Exhibit 19, because, subsequently, it did not designate Exhibit 19 either in part or in whole to be a part of the record. (See Government's designation, Rec. 902.) Nor is any reference made to this Exhibit 19 either in the body, or in the Appendix C, of the Government's Main Brief.

We think it can be said with claim to propriety that under the statement of Government counsel at the trial, and under the method of proof, in reality, only those excerpts from the documents are actually in evidence which the Government had especially marked, except in the one

case (Ex. 27) where the entire document was offered and printed without an excerpt being simultaneously offered.

It is, therefore, clear, we submit, that the charge which we made at page 3 of our Reply Brief and which was made on oral argument and which was documented by Appendix II of our Reply Brief, pages 31 to 42, that the Government's case before this Court was largely built up on matters entirely outside of the record, is fully sustained. The *printed record* is the complete and full record before this Court and it is the full and complete record upon which the court below acted.

2. With respect to Exhibit 26 for Identification.

In Petitioner's Reply Brief (p. 4) we stated that this exhibit was never in evidence. In its Reply Brief (pp. 6 and 7) the Government takes issue with this statement.

It is clear that this Exhibit 26 for identification, upon which the Government so largely relies in this Court, is not in evidence and was never intended to be put in evidence.

The entire record with respect to this exhibit is as follows. It was first produced by the Government in connection with the testimony of the policeman Hynes, whose testimony is as follows (Rec. 273, 274):

> "Mr. Mercado: Q. I will show you a pamphlet here, and ask you if you have ever seen that pamphlet before. *Do not testify in connection with that.*
>
> Mr. Andersen: Is that a new one?
>
> Mr. Mercado: I am just asking if he has ever seen it before.
>
> The Witness: A. Yes, I have seen it before.
>
> Mr. Mercado: Q. I will ask you if you have seen this before and under what circumstances and where.
>
> A. Yes, I have seen this pamphlet entitled, 'Statutes, Theses and Conditions of Admission to the Communist International, Adopted by the Second

Congress of the Communist International July 17th to August 7th, 1920.' This document was taken in a raid from the Communists in the Bryson Building, on October 16, 1928, when we arrested several members of the Communist Party. I have seen several other copies of this. *However, this book was not widely circulated or sold.* I have taken some off of several leaders, at different times of their arrest. This cover on the outside was put on by myself to preserve the book.

Mr. Mercado: I will ask that the pamphlet entitled, 'Statutes, Theses and Conditions of Admission to the Communist International,' be marked Government's Exhibit for identification.

The Court: It may be marked.

('Statutes, Theses and Conditions of Admission to the Communist International, July 17 to August 7, 1920,' was marked 'U. S. Exhibit No. 26 for Identification.')'' (Italics ours.)

Subsequently, counsel for Petitioner (in Petitioner's Reply Brief, p. 4, we erroneously stated that this was counsel for the Government) conducted the following examination of Schneiderman (Rec., p. 835).

''Q. Now, referring to Exhibit No. 26 in evidence, 'Statutes, Theses and Conditions of Admission to the Communist International,' which was put in evidence during the testimony of Mr. Hynes, do you know if that was ever published by the Communist Party of the United States of America, or distributed by them? A. I have no recollection of this particular edition. There is nothing to identify where or how it was published. I do not know of any work of this kind being published by the Party.

Q. Did you ever see this being sold, for instance, in any of the so-called bookshops to which Captain Hynes made reference? A. Not that particular edition. I have no doubt that possibly a pamphlet

called, 'The Statutes and Resolutions of the Communist International' were sold there; but I do not believe that this was ever printed in the country; it looks to me like an English edition, printed in England."

The foregoing is the entire record as to the use of this Exhibit 26 for identification. It makes it clear why the exhibit was not offered in evidence. A sufficient foundation for so offering it had not been laid. With respect to every other exhibit in the way of writings, pamphlets, etc., which the Government offered in evidence after having the exhibit marked for identification, the Government asked a question, and obtained a favorable answer, designed to show that the pamphlet or document in question was an official publication and generally circulated as such. As a typical example, with respect to Exhibit 19 offered in evidence immediately before the offering of Exhibit 26 for identification, the witness was asked if he knew of his own knowledge that the Government's Exhibit 19 for identification "was distributed as one of the official pamphlets of the Communist Party" (Rec. 273). Upon getting an affirmative answer, the document was offered in evidence. But with respect to Exhibit 26 for identification, the witness, however, testified "This book was not widely circulated or sold". Apparently, confronted with this answer, the Government did not feel that it had established a sufficient basis for the document as being an official document to justify offering it in evidence.

It is evident that Government counsel, at the trial, anticipated that he would not be able to lay a sufficient foundation for the admission into evidence of Exhibit 26 for identification—for, with this in mind, in his opening references to the pamphlet, he cautioned the witness as follows: "Do not testify in connection with that" (see quoted testimony above).

As further showing that the fact that Exhibit 26 was not offered in evidence by the Government was not inadvertent, but was intentional, counsel for the Government apparently had not prepared and accordingly did not offer any excerpts from the exhibit as being the excerpts therefrom upon which the Government relied, a practice which, as above shown, the Government's attorney had announced he would follow upon the offering of exhibits in evidence and which, in accordance with such announcement, he had followed with respect to every one of these documents and pamphlets offered in evidence (except Ex. 19, which as we pointed out above, he apparently did not intend to use, and Ex. 27 which was so short that it was printed in full). A reference to the index of plaintiff's exhibits found at pages ii and iii of Volume I of the Record shows that the Government's exhibits upon which it relied and which it had incorporated in the record in the Court below are in each and every case the excerpts only from the documents which excerpts had been marked with a number and the capital letter A at the time of the offer of the document in evidence, plus Exh. 27, printed in full.

We do not think that the subsequent short examination of petitioner by his own counsel, quoted above, in which he erroneously referred to the document as being in evidence, had the effect of putting it in evidence. The two California cases upon which the Government relies in its Reply Brief, page 7, and other similar cases, are not in point. They are cases in which *both parties at the trial* treated a document as in evidence, and *one of them relied upon it, at the trial, as an important part of his case,* although inadvertently it had not been marked in evidence or was informally offered. Here it is clear that the party that produced the document did not intend to offer it in

evidence because no foundation had been or could be laid for its admission. And, certainly, the Petitioner had no reason for wanting in evidence a book which he did not think had ever been published by the Party. Neither party at the trial relied upon Exhibit 26 in any way.

Whether deemed to be in evidence or not, Exhibit 26 for identification has no probative value. It was not shown to have been an official publication of the Communist Party, nor to have been used in any way by the Petitioner.

In any event, Exhibit 26 was not one of the documents which the Government's attorney designated for the record, either in whole or in part. (See Government's designation, Rec. 902.) It is probable that the Government's attorney recognized that Exhibit 26 for identification was not in evidence. In consequence, no part of Exhibit 26 is in the record in this case.

The Government's case in this Court is built up to a large extent around this Exhibit 26. As we stated in our Reply brief: "If the quotations from, references to and arguments based on this Exhibit 26 were stricken from the Government's brief, it would be left in shreds". (Petitioner's reply brief, pp. 4, 5.) Reference is made at least 78 times in the Government's brief and the appendices thereof to this document.

A policeman makes a raid on October 16, 1928 (more than a year after Schneiderman's naturalization) and seizes several copies of the document. He testifies "this book was not widely circulated or sold" (Rec. 274). Schneiderman testified that he had never seen the book in question. The book is marked for identification, but for some reason is not offered in evidence. The record is devoid of proof that it was a party document; on the contrary Schneiderman testified that "I do not know of any work of this kind

being published by the Party" (Rec. 836). See page 7, *supra*. Nevertheless, solely because of his membership in the Communist Party all the pronouncements of that book are now attributed by the Government to Schneiderman.

On such a record as to such an Exhibit and basing its case to a large extent on that Exhibit, 12 years after his naturalization, the Government now seeks to sustain Schneiderman's conviction of the offense (which, while not criminal, is analogous thereto) of having obtained his naturalization illegally, for which offense he is to suffer the penalty of the deprivation of his citizenship. We submit that this would be a gross miscarriage of justice.

3. With respect to the excerpts from documents which are, in fact, in the record, to wit Exhibits 6-A to 18-A inclusive and with respect to Exhibit 27 printed in full.

We take the liberty of again calling the attention of the Court to the analysis of these documents in Appendix I of our Reply Brief, pages 26 to 30 inclusive. This analysis shows that only eight out of these fourteen exhibits were published prior to the petitioner's naturalization. Consequently, the rest are irrelevant and have no right to be in the record. Of these eight, Schneiderman was shown to have had familiarity with four only and the extent of that familiarity is pointed out in said Appendix I of our reply brief. It is further shown that even with respect to these prior-to-1927 exhibits, the Government's reliance is almost entirely upon excerpts from and references to pages therein, which are not parts of the record.

In summary, it thus appears, we submit, that the Government in this Court is seeking to sustain the cancellation of Schneiderman's citizenship on the basis of proof that is not in the record. The Government apparently, and we

think, intelligently, is of the view, that the proof actually in the record will not sustain the charges made.

The Illegality With Which Petitioner Is Charged.

It is manifest that the Government, in this Court, is seeking to sustain the cancellation of Schneiderman's naturalization on grounds of illegality with which he was not charged in the Complaint herein. Further, the conduct charged in the Complaint as constituting illegality was not a disqualification under the statute in force in 1927.

It was charged in paragraph IV of the Complaint that the petitioner's certificate of naturalization was "illegally procured" (Rec., p. 3) on the ground therein stated. It was also charged in paragraph VI that the certificate of naturalization was "fraudulently procured" (Rec., p. 4). No other charges were made.

To dispose of this last charge first, the alleged fraud was "that respondent concealed from said United States District Court * * * the facts that * * * he was a member of * * *" the Communist Party. The District Court in its corresponding finding of fact VI (Rec., p. 50) found the fact of such fraudulent concealment. Obviously, this was an unsound and unjustified finding, for the reason that there was no duty upon Schneiderman to reveal anything that he was not asked in the naturalization proceedings. There was no requirement that he reveal the fact that he was a Communist. There was absolutely no proof that there was any affirmative concealment on Schneiderman's part of this fact. His connection as a boy of 21 with the Communist Party, such as it was, was open; it was not furtive or secret. Consequently, the Circuit Court of Appeals in its consideration of the case, very properly refused to consider the ground of fraud (Rec., p. 912), and in this Court, with equal propriety,

the Government makes no contention that the certificate of naturalization was fraudulently procured.

We, therefore, come back to the charge of illegality found in paragraph IV of the complaint. This paragraph reads as follows (Rec., p. 3):

> "That said decree and certificate of naturalization were illegally procured and obtained in this: That respondent was not, at the time of his naturalization by said court, and during the period of five years immediately preceding the filing of his petition for naturalization, respondent had not behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, but in truth and in fact during all of said times, respondent was a member of and affiliated with and believed in and supported the principles of certain organizations then known as the Workers (Communist) Party of America and the Young Workers (Communist) League of America, whose principles were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence."

The language of the above quoted paragraph is somewhat ambiguous. It is not entirely clear whether the verbs appearing in the last few lines of the paragraph, to wit, "advised, advocated and taught", refer back for their subject to the word "respondent" several lines back, or refer back to the word "organizations". We believe, however, that it is manifest that the verbs "advised, advocated" etc. refer back to the word "organization". In a practically similar sentence with parallel verbiage appearing in the affidavit of one Charles annexed as Exhibit 4 to the complaint, the similar words "teaches and advocates" refer

back to the word "organization" (see paragraph 4, Charles affidavit, Rec., p. 8). Further, in the finding of the District Court No. IV which is almost identical in language with paragraph IV of the complaint, and which we assume was drawn by the same Government counsel who drew the complaint, the words "advised, advocated and taught" refer back to the words "which organizations" (Rec., p. 49). It thus appears that the *sole charge of illegality* made against Schneiderman *was bad behavior* during the five year period previous to his naturalization, to wit, between the ages of 16 and 21, *which bad behavior consisted of the fact that he "was a member of* and affiliated with *and believed in* and supported the principles of" *the Communist Party.*

We have analyzed the opinions of the District Court and of the Circuit Court of Appeals at pages 10 and 11 of the Petitioner's main brief. It appears that the illegality on which the District Court relied was lack of actual attachment to the Constitution because of petitioner's membership in the Communist Party. This may be considered as the equivalent of a conclusion by the District Court of bad behavior for lack of attachment because of such membership.

When, however, the case came to the Circuit Court of Appeals the "illegality" which that court found to exist was not bad behavior, but a false oath. There being no charge in the complaint of illegality because of a false oath, the Circuit Court of Appeals, we submit, could not properly affirm the decree of the District Court on the basis of that determination.

In this Court, the Government apparently feels that it is on too weak ground to endeavor to sustain the cancellation on the basis only of the charge in the Complaint. The Government accordingly, in this Court, bases its claim of illegality on:

A. A false oath. (See Government's brief, paragraph A, pages 10 and 11 and argument in support thereof, Government's brief, pp. 28 to 52, inclusive.)

B. Bad behavior in the five year period prior to the petitioner's naturalization, claimed to be shown in three ways, *all based on his membership in the Communist Party:* (See Government's brief, pp. 11 to 16, and argument in support thereof, Government's brief, pp. 53 to 110.)

> (1) In that "it was a basic communist principle * * * accepted by him (petitioner) in his general subscription to Party principles, that Party members were bound to resort generally to illegal activities * * * *". (Government's brief, p. 12);
>
> (2) "That the Communist Party and the petitioner believed in, advocated, and taught the overthrow of this Government by force and violence." (Government's brief, p. 12), and
>
> (3) In that the petitioner "wholly disapproved of the principles embodied in it (the Constitution) and in our existing political structure. It was the view of the organization to which he belonged * * *." (Government's brief, p. 15.)

C. Membership in the Communist Party, as a party which disbelieved in, or was opposed to organized government. (See Government's brief, paragraph C, p. 16, and argument in support thereof, Government's brief, pp. 110 to 127).

The Complaint, as shown, did not charge illegality because of a false oath ("A" above), so consequently the Government's contention in this Court on that basis is without foundation in the Complaint and must be disregarded.

The Complaint, as shown, did not charge illegality because of any claim that the petitioner was a member of a party which disbelieved in or was opposed to organized

government ("C" above). Consequently, the Government's contention in this Court on that basis is without foundation in the Complaint and must be disregarded.

We believe that we have demonstrated, both in our main brief and in our reply brief, that the charges of a false oath and the charges of membership in an organization disbelieving in organized government, even if they had been made in the Complaint, were not sustained; but, not having been made, they afford no basis for the cancellation of Schneiderman's naturalization.

This leaves the question of bad behavior ("B" above). There was no charge in the Complaint of bad behavior arising from the claim that the members of the Communist Party were bound to resort generally to illegal activities (B (1) above). Consequently, the Government's contention in this Court on that basis is without foundation in the Complaint and must be disregarded. (This point is argued by the Government in its brief, pp. 11 and 12 and pp. 54 to 60 inclusive.)

The other two grounds of alleged misbehavior on the part of Schneiderman as a boy from 16 to 21, both based on his membership in the party, we have discussed at length in our main brief and our reply brief. They are, we submit, without substance in law or in fact.

As was stated by this Court in a somewhat parallel case: "Conviction upon a charge not made would be sheer denial of due process." *De Jonge* v. *Oregon*, 299 U. S. 353, 362.

Party Membership.

When all is said and done, every charge against Schneiderman is based upon the fact of his having been a member of the Communist Party. It is his *membership* in that party, that and that only, which, in reality, constitutes

the alleged illegality. That membership is thus made, *ipso facto*, the disqualification.

Illegality because of party membership is all that the Complaint herein charges. Views, imputed to petitioner because of party membership, is all that the proof established. Direct, immediate proof of personal holding of forbidden beliefs was lacking, or where present, was so flimsy as to be negligible. Direct proof of obnoxious personal behavior was entirely lacking; it is non-existent. The pattern of the proof was to establish Schneiderman's activity as a young member of the party, to introduce excerpts from documents and pamphlets claimed to be official writings of Communist Party members, mostly Russian, and then, because of his party membership, to impute the material in these documents to Schneiderman, even when he expressed his own personal views as being otherwise. Petitioner, it is claimed, could not make a true oath of allegiance—because he was a Communist Party member. Petitioner, it is claimed, had not behaved as one attached to the Constitution—because he was a Communist Party member. Petitioner, it is claimed, was disqualified because, as a Communist Party member, he belonged to a party alleged to disbelieve in organized government.

The trouble is that the Complaint charged, as its one ground of illegality, membership in one type of party only, to wit, a party which advocated the overthrow of the government by violence. But, in 1927, membership, as such, in such a party was not a disqualification. Congress, in the applicable 1906 statute, had dealt specifically with the subject matter of party membership as a disqualification and had specified one type of bad membership only, to wit, membership in a party which disbelieved in organized government, i. e., anarchists. Not until 1940 did Congress specify another type of bad party membership as a disqualification, to wit,

membership in a party advocating the overthrow of the government by violence. And then, Congress expressly stated that that disqualification should apply "hereafter". The Complaint herein, nevertheless, is based on the charge that membership in such a party was a disqualification in 1927. Even if proved, as it was not, a valid ground of disqualification was not established. See *Kessler* vs. *Strecker*, 307 U. S. 22.

Chapter 3592 of the Laws of 1906, 34 Stat. 597, which governed Schneiderman's naturalization, provided that "the petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, * * *." The marginal note in the Statutes at Large shows the fact to be that this provision of the law was directed at "anarchists". While the Government contends that Communists teach disbelief in organized government (anarchy), the proof utterly fails to establish that contention. (See our discussion of this point, pages 21 to 24 of Petitioner's Reply Brief.)

Further, in 1940 in adopting a practically new naturalization statute, Congress for the first time provided that "No person shall *hereafter* be naturalized * * * (b) who * * * advocates or teaches, or who is a member of or affiliated with any organization * * * that believes in, advises, advocates or teaches—

> (1) the overthrow by force or violence of the Government of the United States * * *" (8 U. S. C. 705).

In making membership in 1927 in the Communist Party *ipso facto* a disqualification as being membership in a party which advocates the use of force, the courts below have added a new disqualification affecting naturalizations

in 1927, in a category, to wit, the category of party membership, with respect to which Congress has expressly dealt. Congress has provided that membership in a party that believes in the overthrow of the Government by force shall be a disqualification only after the year 1940. Nevertheless, in this case, the courts below have attempted *ex post facto* to make such membership a disqualification in the year 1927. Such *ex post facto* disqualification can not properly be added by the courts.

The statute under which the proceeding for the cancellation of the petitioner's citizenship has been brought, while of course not a criminal statute, is similar in nature thereto. The plaintiff is proceeded against by the U. S. District Attorney, charged with illegality in a dealing with the United States Government, and he suffers the drastic penalty of a deprivation of his citizenship. A statute of this character should be very strictly construed. The petitioner should not be held subject to such a severe penalty unless Congress has clearly so provided. The requirements of the law in such a situation should not be changed or modified either by administrative action or by judicial interpretation. *United States* vs. *Ginsberg*, 243 U. S. 472, see also *Vierick* vs. *U. S.*, 11 U. S. Law Week 4233; *Kessler* v. *Strecker*, 307 U. S. 22.

In conclusion, we have this astounding result. An American-born boy arriving at the age of twenty-one on the same day as the Petitioner could with propriety have been the president of the organization of which Schneiderman was an humble member, and such American-born boy could in time have run for the Presidency of the United States as a candidate of that organization. Yet Schneiderman, twelve years after naturalization, is to be deprived

of his citizenship because what was proper for this American-born boy, to wit, membership in the Communist party, was held a disqualification for Schneiderman, though Congress had not expressly so provided.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 2.

WILLIAM SCHNEIDERMAN

v.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FINAL MEMORANDUM FOR PETITIONER.

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CAROL KING,
Counsel for Petitioner William Schneiderman.

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FINAL MEMORANDUM FOR PETITIONER.

We pray the indulgence of the Court for this further memorandum. There, of course, must be an end of brief making, but there has been so much understandable confusion as to the record, evidently not cleared up by previous memoranda, and such a shifting of the Government's position, and such an interest by the Court in the important questions involved that we trust that what is set forth herein may be found to be helpful.

At the outset—Mr. Justice Roberts at the argument, if we correctly remember his statement, asserted that Schneiderman's counsel at the trial, after he had moved to strike out Exhibit 26, and the motion had been denied, had then stipulated that Exhibit 26 should be a part of

the record. We have been unable to find any such stipulation. It is true that in his first designation for the record, the attorneys for Schneiderman designated "One copy of all exhibits in evidence or offered for identification," but without reference to any numbers (R. 59), but this designation was clearly ineffective and was superseded by the designation upon which the record was apparently printed (R. 902), wherein the United States Attorney designated for the record "All of the plaintiff's Exhibits designated as excerpts from the printed exhibits" and "All of the defendant's Exhibits designated as excerpts from the printed exhibits". Schneiderman's counsel's Request for and Designation of Record specified "All excerpts from various pamphlets offered as exhibits." (See Supplemental Brief for Petitioner, pp. 6-11). Neither counsel designated any part of Ex. 26. Consequently no part of Ex. 26 is printed in the record.

I.

The pertinent documents and Schneiderman's activity in connection therewith.

The statute, in 1918, required that "It shall be made to appear to the satisfaction of the court * * * that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required * * *". (Act of June 29, 1906).

In order for another District Court, twelve years later, to set aside the decree of the naturalization court granting a certificate of naturalization on the ground of fraud or illegality, it should, we submit, be made to appear by positive and conclusive evidence that the naturalization court (if it had been in possession of all the evidence which was produced by the Government in the cancellation proceeding), had no right, *as a matter of law*, to be "satisfied" that the applicant had behaved "as a man • • • attached to the principles of the Constitution • • •". The proof in the cancellation proceedings should show unmistakably that even if the naturalization court had been in possession of the facts proven, it would have been an abuse of discretion for it to have been satisfied.

We submit that on the record in this case the Government entirely failed to produce proof of this character. The Government's proof consisted of the testimony of the petitioner, the testimony of Humphreys, an expelled and disgruntled ex-member of the Communist Party (R. 227, 228), the testimony of Hynes, a policeman, once, for eight months, a Communist Party member (perhaps not *bona fide*) (233) and certain documents.

A careful analysis of the proof takes on an added importance in view of the position taken by the Government for the first time at the argument, that the Government's main (in fact, it may be its only) reliance is on Schneiderman's own personal beliefs as showing lack of attachment to the principles of the Constitution. The Solicitor General, at the argument, stated that the Government does not rely on Schneiderman's mere membership in the Communist Party, and that the Government does not rely on imputing to him the statements contained in the writings of party members and party platforms, ex-

cept as he, by his own adoption thereof, imputed them to himself, and on the question of his personal beliefs, the Solicitor General stated that the Government did not place reliance on Schneiderman's own personal belief in force and violence.

It is therefore of the utmost importance to ascertain exactly what the proof is as to Schneiderman's personal beliefs in 1927, although, in this connection, it is "behavior" that is the test laid down by the statute, and not beliefs.

At the argument it appeared that the following question of fact had not been made clear to the Court:

1. What exhibits were officially circulated prior to the naturalization date in 1927?

2. What was Schneiderman's familiarity with these exhibits, as shown by the record?

3. What did the record show as to his zeal or activity in distributing the literature?

Answering Questions 1 and 2.

As to question 1, no documents prior to the constitution of the Communist Party of America of 1938 (R. 14) were officially accepted by the party organization as party documents (R. 364-365). Some of the ten documents which had been written or published prior to 1927 were utilized in study classes and were distributed among party members for consideration, with the approval of officers and teachers. As an illustration, the Communist Manifesto (Ex. 7) was so used; but it could not properly be said that the Communist Manifesto was ever an official document of the Communist Party of the United States. The proof as to the use of these documents, in classes or otherwise, and as to Schneider-

man's familiarity therewith is given in the Annex to this Memorandum.

In summary, we believe that it may be fairly and correctly stated that *there are only two documents* which meet the test of: (a) publication and circulation prior to 1927; (b) the use in classes and among party members, with the approval of teachers; (c) Schneiderman's familiarity therewith; and (d) use by him personally in connection with classes organized by him or in open forums conducted by him. These two documents are the Communist Manifesto (Ex. 7), and Left Wing Communism by Lenin (Ex. 9). As to both of these, the record consists simply of "Excerpts." As to both of these, it is clear that they were written by the author with a mind to, and directed toward, conditions outside the United States.

Answering Question 3 above, as to Schneiderman's personal activity in the distribution of the literature.

There is no positive, direct proof that Schneiderman ever distributed or disseminated any of the literature though the two documents (Ex. 7 and Ex. 11) were used in classes organized by him.

The testimony as to his activities is all found at pages 87-89 of the record, when he was called as a witness on behalf of the Government, and at pages 357-360 when his testimony was taken as a witness on his own behalf.

In 1922, at the age of 16, he was one of the organizers of the *Young Workers League of California*. He was "educational director" thereof and as such his functions or duties were to organize forums and classes for study. "* * * I did not teach them. I just organized them" (R. 87). These classes were "For the purpose of studying the theory of Marxism and the political and economic situation in the

countries." "They were open to anybody" (R. 87). He continued as such "educational director" for "two or three years" (R. 88), say up to 18 or 19. As educational director "I was not an instructor in the classes that were organized; my job was to register students in the classes and send out notices for meetings" (R. 359). In teaching the philosophy of the League there were used in the classes the Communist Manifesto of Marx (which is Exhibit 7), and Left Wing Communism (which is Exhibit 9) (Rec. 89). He did not recall whether State and Revolution by Lenin (Exhibit 8), or Theory and Practice of Leninism (which is Exhibit 11), were used (R. 89). He did not think Exhibit 11 was written at that time (R. 89). He did not think that Exhibit 8 was used at that time (R. 89, 127, 128).

In 1925, Schneiderman joined the *Workers Party* (R. 92). He became "corresponding secretary" of the Workers Party in 1925 and 1926 (R. 92, 358). His duties were to handle dues and membership records (R. 93). This Party maintained study classes and open forums to discuss the political and economic situation in the country and to teach the theories and practice of Marxism and Leninism, using practically the same books as were used in the Young Workers League (R. 94). Schneiderman participated in the conduct of the "open forums", but not in the study classes (R. 94). As corresponding secretary, he "wrote down the minutes and sent out communications for meetings" (R. 358). It was not an executive position or one in which he was a spokesman for the organization (R. 359). It was more or less a clerical job, taking minutes and writing letters (R. 359).

During all of this time he was going to school and was working his way through school (R. 358),—so the amount of time which he could devote to these jobs must have been relatively small.

Nowhere does it appear how large the classes were which Schneiderman succeeded in organizing in the two or three years following 1922 when he was the so-called "educational director". The likelihood, of course, is that they were not very large. Schneiderman summed up his activities in those years in this sentence "I considered myself more or less *a student* of Marxism rather than an executive officer of the Party" (R. 359).

In summary, on the question of his zeal in distributing the literature, Schneiderman's entire activity, as shown by the record, was that of an organizer of classes which studied the Communist Manifesto (Ex. 7) and Left Wing Communism (Ex. 9).

On such a record as to such inconsequential activity we do not believe that any court would have been justified in holding that his "behavior" was not the behavior of a man attached to the principles of the Constitution.

II.

Schneiderman's Beliefs.

The Solicitor General at the argument stated that the Government's reliance was on Schneiderman's lack of attachment to the Constitution as shown solely by Schneiderman's own statements as to his own beliefs, and the Government pointed to what Schneiderman had testified to at page 103 of the record as constituting that statement and as thus constituting the Government's case. [The Solicitor General also stated that later in the trial Schneiderman modified the testimony given at page 103.] If beliefs peacefully held and peacefully expressed are to be the tests of a man's behavior as one attached to the principles of the Constitution, then, as we understand it, the Govern-

ment rests itself on what Schneiderman says as to his own beliefs at pages 102 and 103 of the Record.

We are still of the view that the complaint in this proceeding, properly analyzed, in reality only charges that Schneiderman had not behaved as a person attached because he was a member of the Communist Party. (See Supplemental Brief for Petitioner, pp. 12 *et seq.*). The Government, however, has apparently abandoned that alleged ground of illegality and rests its case, as stated, on Schneiderman's own beliefs. We will therefore consider them.

This is the testimony as to Schneiderman's beliefs:

"During all this period" when he was a member of the various parties, he "subscribed to the principles of those parties" (R. 102). "I believed in the essential correctness of the Marx theory as applied by the Communist Party of the United States." I subscribed "to the philosophy and principles of Socialism as manifested in the writings of Lenin" (R. 103). (See similar testimony at R. 898).

When later questioned by his own counsel, he in a long statement elaborated his views as to what he had believed (R. 361 *et seq.*). Here, he said, among other things "My understanding and interpretation of the program, principles and practice of the Communist Party ever since I joined the Party were and are essentially the same as those enunciated in the present constitution of the Party" (R. 365).

As to the Communist Manifesto, when he was asked "*Do* you approve of the principles enunciated in this Communist Manifesto of Marx and Engels", he answered: "• • • I believe that these general principles of Marxism,

particularly as they applied to the period in which they were written and the country about which they were written, are entirely correct" (R. 122) (See also R. 878-879). "Did you approve of those principles when you were admitted to citizenship?" "* * * Yes, I did" (R. 123).

There is no clear specification of what constituted the "philosophy and principles of Socialism as manifested by the writings of Lenin", in which Schneiderman believed (R. 103). He did believe in the abolition of private property to the extent that the means of production should be owned by the Government (R. 870, 877, 878, 888 to 893). He did not believe in the abolition of countries or nationalities (R. 874, 876, 893 to 895). He believed that every working man has a country to which he owes allegiance (R. 876). He did not believe that, in the event the Communist Party became a majority party in the United States, it would be justified in using force and violence to bring about a change in the form of Government (R. 885). At the time of his admission, he believed that the spirit and letter of the Constitution should be applied in full force (R. 896-897).

On such a record, we submit it cannot be held that a cancellation court, twelve years after his admission to citizenship, must find as a matter of law that it was so clear that Schneiderman in 1927 held beliefs that showed such lack of attachment to the principles of the Constitution that the naturalization court before whom he appeared for naturalization was bound to say—in fact had no discretion in the determination as to whether it was "satisfied"—that it would not be legal for Schneiderman to become a citizen.

III.

What Are the Principles of the Constitution?

With much pertinency, the question was raised at argument by Mr. Justice Frankfurter as to whether the expression "the principles of the Constitution" was not so vague and indefinite in its meaning as to furnish no criteria to the naturalization court by which that court could determine the proper attachment.

The Government points to no authoritative statement of what constitutes "the principles of the Constitution", and we know of none. There would seem to be nowhere any specification which would enable a judge of the naturalization court, having obtained with sufficient definiteness a catalogue of the applicant's beliefs, to place them alongside the principles of the Constitution and determine whether the two were in harmony.

Depending upon the time, place and person, a great many divergent views would undoubtedly exist in the opinions of the courts and of public officials as to what constitute these principles. Is the entire framework of the Government one of the principles, or can one disbelieve in, *e. g.*, the electoral college. If the electoral college is not a principle, is a legislature composed of two bodies, one of the principles? Is the direct election of senators a principle? Is woman suffrage a principle? Is national prohibition a principle? Is the right of the federal government to collect income taxes a principle? Is Negro slavery a principle? Was the provision of the Fifteenth Amendment a principle prior to 1870 and is it now? Etc., etc. Certainly some basic principles of the Constitution are set forth in the First Amendment, in which the petitioner herein most heartily believes.

It is thus clear that the fate of the applicant for naturalization depends to a very large degree upon the personal predilections of the judge, as to whether he is a liberal or a conservative, and upon the particular time in the history of the country when the application was made, and upon the particular trend of public opinion at the time. And, having been granted naturalization, the applicant, nevertheless, throughout his lifetime, continues to be subject to a change in the temper of the times and a revision of opinion as to what are permissible views, and, again, to the personal predilections of the court before whom his certificate of naturalization is brought for cancellation. It is perfectly clear that Schneiderman might have met an entirely different fate at the date of his naturalization before two different district judges, and, in the present proceeding, he might have met with a different fate if he had come before a different judge in a different court of the Union. It is clearly inequitable that the applicant's obtaining of citizenship and his subsequent retention of citizenship should depend on so many factors of time, place and person not predictable in advance.

Further, Congress had expressly dealt with the subject of beliefs in the naturalization statute and had specified only two beliefs as being improper beliefs. The applicant had to set forth in his petition that he was "not a disbeliever in or opposed to organized government • • • nor a believer in the practice of polygamy".

This indefiniteness as to the principles of the Constitution and the specification by Congress of what should constitute forbidden beliefs strengthens our view that the emphasis of the statute in this matter is on the word "behavior", and consequently that the sum total of the language of the statute in this connection means, in essence, that the applicant

shall have behaved *as a good citizen* during the probationary period. (See further discussion on this point at pages 12 to 14 of our Reply Brief.) We, of course, do not contend that the teaching by an applicant for naturalization of proscribed beliefs (e.g., anarchy, polygamy, force and violence) would not constitute improper behavior.

Respectfully submitted,

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ANNEX.

A. The relevant prior-to-1927 documents.

Appendix 1 (p. 26) to the Petitioner's Reply Brief contains an "Analysis of the Documents and Literature Cited and Relied upon by the Government in its Main Brief." In its "Memorandum for the United States", filed on the eve of the argument, the Government makes a somewhat different analysis of these documents and the statement of the record with respect thereto. In the hope that it will be helpful, we have herein, in a different form, tabulated these documents in so far as it is claimed by the Government that they were circulated prior to 1927.

There are ten of these documents, as follows:

Exhibit 7—the Manifesto of the Communist Party (R. 123-127).

Exhibit 8—State and Revolution by Lenin (R. 128-143).

Exhibit 9—Left Wing Communism by V. I. Lenin (R. 144-147).

Exhibit 11—Theory and Practice of Leninism by Stalin (R. 158-160; 211-212).

Exhibit 12—Fourth National Convention Workers Communist Party of America (R. 240-247).

Exhibit 13—The Second Year of the Workers Party in America (R. 248-254).

Exhibit 16—A. B. C. of Communism (R. 187-192).

Exhibit 17—"The International Youth"—a magazine (R. 164, 270-272).

Exhibit 27—Programme and Constitution of the Workers Party of America (R. 275-312)
and

Exhibit 26—Statutes, Theses and Conditions of Admission
for iden. to the Communist International (R. 273-274).

With respect to this last exhibit, we think it is clear that it is not in evidence; it certainly is not in the record. See pp. 6 to 11 of petitioner's supplemental brief.

B. Date of the publication of the relevant documents in the United States.

Exhibit 7—Was published in 1848, but the edition shown petitioner at the trial and marked as an exhibit was published in 1932 (R. 123). This date does not appear in the record but is stated at page 151 of the main brief for the Government as being the date of the publication of the particular exhibit.

Exhibit 8—Apparently published under date of April 1924, (R. 129), though the record is devoid of proof as to when actually circulated in the United States by the Communist Party (R. 128). Schneidermann did "not recall" whether it was used in classes in 1922 to 1927 (R. 89) (see R. 207).

Exhibit 9—Purports to have been published in 1920 (R. 144). It was used in the classes organized by the Young Workers' League (R. 89 but see R. 144). In Schneidermann's opinion, it was not circulated until "several years after it was written" (R. 143), because there was no available English translation, Schneidermann not being able to fix the exact date (R. 143-144).

Exhibit 11—Probably circulated in 1924 and 1925 (Hynes, R. 238). The Government in its "Memoran-

dum for the United States", page 7, argues that it was published either in 1924 or in 1925 (see R. 159, R. 211-212).

Exhibit 12—There is nothing in the record which shows when this document was published or circulated. It purported to be a statement of action taken at the Fourth National Convention of the Workers Party of America, which was held in Chicago in August, 1925 (R. 241), and from this fact the inference is drawn that it was published and circulated at or about that time, but there is no direct proof of that fact.

Exhibit 13—There is nothing in the record which shows when this document was published or circuculated. It purported to be a report of the Central Executive Committee of the Third National Convention of the Workers Party of America held in Chicago in December 1923, and January 1924 (R. 249), and from this fact the inference is drawn that it was published and circulated at or about that time but there is no direct proof of that fact (R. 249).

Exhibit 16—According to the record the book came out somewhere between 1920 and 1924 (R. 163). As to its circulation, Schneiderman testified (R. 163):

"Was that the book used by the Communist Party, in the extension of its propaganda?

"I do not know whether it was; because this book was never accepted as an authorized version, and it was subsequently barred from use in all of our schools and open forums and discussions" (R. 163). Humphreys testified that the book was used as a textbook by classes in San Francisco in 1924 and 1925 (R. 185).

Exhibit 17—Some issues of this magazine were probably published before 1925 (R. 164). The police-

man Hynes testified that it was a magazine sold and circulated by Communist Party book stores, but published in England (R. 270). Petitioner was of the view that he must have read it when he was fifteen or sixteen years of age (R. 835).

Exhibit 27—There is proof that this particular exhibit or a copy of a similar book was circulated by the Party in 1922, when policeman Hynes joined the Workers' Party (R. 275, 233).

Exhibit 26—*for iden.* The record is devoid of proof as to when this document was printed in the United States or circulated. Hynes testified that the "document was taken in a raid from the Communists in the Bryson Building, on October 16, 1928 * * *. However, this book was not widely circulated or sold" (R. 274).

Schneiderman testified that with respect to this Exhibit 26 for identification "I have no recollection of this particular edition. There is nothing to identify where or how it was published. I do not know of any work of this kind being published by the Party * * *. I have no doubt that possibly a pamphlet called The Statutes and Resolutions of the Communist International, were sold there (in book shops to which Captain Hynes made reference); but I do not believe this was ever printed in the country; it looks to me like an English edition printed in England" (R. 836). Therefore, there is no proof as to when this document was ever printed in the United States and no proof of its circulation prior to the raid made by Hynes in 1928.

On the basis of the foregoing, we respectfully submit that the court in considering whether, twelve years afterwards, it should take Schneiderman's citizenship away from

him, should unquestionably refuse to give consideration to Exhibit 26 for identification, and should also, we submit, refuse to give consideration to documents so indefinitely established as Exhibits Nos. 8, 12, 13 and 17.

This leaves only Exhibits 7, 9, 11, 16 and 27 as to which there is some amount of satisfactory proof that the document was published and circulated in the United States prior to 1927.

C. The Official Character of the Relevant Documents.

As we have stated in the main text of this Memorandum, at page 4, the only document which has the official sanction of the Communist Party of America, or of any of its predecessors, is the Constitution of the Communist Party of 1938. When Humphreys or Hynes testified that certain documents were official publications, they were testifying as to what was not within their knowledge or what was not a fact. The fact that a document was published or circulated by the "literature department" merely showed that it was a document which the department felt should be studied.

Exhibit 7—The 1932 edition offered in evidence was admitted by Schneiderman to be an official translation (R. 122-123).

Exhibit 8—Admitted by Schneiderman to have been "circulated" by the "literature department" of the Communist Party (R. 128).

Exhibit 9—Admitted by Schneiderman to have been circulated by the Communist Party in the United States (R. 143).

Exhibit 11—Received in evidence on testimony of Humphreys that he had been taught "that all literature put out by the Communist Party, * * *"

was "controlled, owned and operated by the Communist Party" and that the Daily Worker Publishing Company "was an official publishing agency of the Workers Communist Party" (R. 211-212).

Exhibit 12—Received in evidence on testimony of policeman Hynes that he had seized a number of copies and bought additional copies in a store, and that the publication on its face says that it is an official publication and that "It was sold and circulated by the Communist Party in Los Angeles" (R. 240).

Exhibit 13—Received in evidence on testimony of Hynes that it was sold and distributed by the Communist Party book stores; that he had seized copies from Communist Party headquarters and that he knew of his own knowledge that it was "distributed by the Communist Party as their official report" (R. 248).

Exhibit 16—Received in evidence on testimony of Humphreys that the book was used as a text book in teaching classes by the Workers Communist Party in 1924 and 1925 (R. 185). However, Schneiderman testified that this "book was never accepted as an authorized version, and it was subsequently barred from use in all of our schools and open forums and discussions" (R. 163). This book could not be regarded, therefore, as an authorized publication.

Exhibit 17—Received in evidence on testimony of Hynes, similar to that given with respect to Exhibits 12 and 13 (R. 270) (see above). Schneiderman, however, testified, categorically, that this Exhibit 17, a magazine published in England, was not an official publication of the Communist Party (R. 835). We believe that his

testimony is entitled to more weight than the testimony of Hynes, particularly inasmuch as Schneiderman, who knew, testified that the book shops in which Hynes stated that the magazine was sold, were not book shops over which the Communist Party had any authority or control (R. 830). As tending further to show lack of official character, Humphreys testified that he had not used this pamphlet in his cla ses (R. 220).

Exhibit 27—Received in evidence on testimony of Hynes that he had received a copy of the "Programme and Constitution" when he joined the organization in 1922, and that, from his examination of the document, it represented the program of the Party (R. 275-276).

Exhibit 26—*for iden.* Offered for identification through Hynes, but not offered in evidence as he did not purport to give it an official character (R. 274).

We submit that the Hynes testimony was incompetent to prove the official character of the documents introduced in evidence through him. In any event, Exhibit 17 was clearly proved not to have any official standing, and Exhibit 16 should be regarded as not having official standing.

D. Schneiderman's familiarity with the documents.

In general, as to familiarity, Schneiderman testified:—"my familiarity with writings at that time" (when he became a citizen), "was limited to the writings of Marx, Engels and probably Lenin." "I do not believe that any of the Stalin writings were in circulation or in use at that particular time" (R. 898).

Exhibit 7—Schneiderman testified that he was familiar with the authorized English translation of the

Communist Manifesto published in 1932 (R. 123). The Communist Manifesto was used in the classes he organized in 1922-1925 (R. 89).

Exhibit 8—Schneiderman was not asked, nor did he state, that he had ever read Exhibit 8, "The State and Revolution" (R. 89, 127-128); but it may be inferred that he had done so at some date.

Exhibit 9—Schneiderman testified that he was familiar with this Exhibit (R. 143). He stated that it was used in the classes of the Young Workers' League (R. 89).

Exhibit 11—Schneiderman testified that he was familiar with the Theory and Practice of Leninism by Stalin, though not familiar with the "particular edition" presented as an exhibit (R. 158); "* * * I am sure I read the work; but this particular edition I am not familiar with" (R. 159-160). He personally did not use it and did not observe it in the Communist book stores (R. 159). The record does not show when Schneiderman had "read the work." He did not think it was used in classes he organized (R. 89).

Exhibit 12—Schneiderman testified that he was not familiar with that exhibit or its contents (R. 160).

Exhibit 13—Schneiderman testified that he was not familiar with that exhibit or its contents (R. 161, 883).

Exhibit 16—Schneiderman testified that he was familiar with this exhibit but he was not asked nor did he state when he became familiar therewith (R. 163).

Exhibit 17—Schneiderman, on direct, testified that he had read some of the issues of this particular magazine but could not vouch for having read this particular one (R. 164). On re-direct, he said "I have no doubt that I have read it,

although I must have been fifteen or sixteen years old when I read it, and I would not recall everything in it" (R. 835).

Exhibit 27—Schneiderman testified that he was not personally familiar with that document (R. 836-837).

Exhibit 26—*for identification.* There is nothing in the record to show that Schneiderman had read or was familiar with the contents of this particular book (R. 836).

On the basis of this analysis we respectfully submit that the Court must dismiss from consideration:—

Exhibits 12, 13 and 27, because the proof is affirmative that Schneiderman was not familiar with them; and

Exhibit 8, because Schneiderman was not shown to have read the document before 1927, and

Exhibit 11, because Schneiderman was not shown to have been familiar with it prior to 1927, and

Exhibit 17, because of the very slight familiarity of Schneiderman with this document which was not an official publication.

As to the documents as to which there was clear proof that they were both published and circulated prior to 1927, to wit, Exhibits 7, 9, 16, 17 and 27 (see p. 17 above), the proof was *affirmative* that he was *not familiar* with Exhibit 27, so that document is out. This leaves only Exhibit 7 (the Communist Manifesto), Exhibit 9 (Left Wing Communism, by Lenin) and Exhibit 16 (the A. B. C. of Communism), and perhaps Exhibit 17.

On the basis that the proof on which Schneiderman's citizenship may properly be cancelled must be clear and conclusive, the Court should certainly exclude Exhibit 16 for lack of proof as to the date when Schneiderman was familiar with it. Further, the Court should exclude Exhibit

16 from consideration because the "book was never accepted as an authorized version, and it was subsequently barred from use in all of our schools and open forums and discussions. * * * and later, the authors and editors were expelled from the Communist Party—That is, not from the Communist Party of America, but from the Communist Party of Russia" (R. 163-164).

As documents (a) clearly published prior to 1927 and with (b) respect to which sufficient familiarity therewith by Schneiderman was shown to make the same relevant, there thus remains only the Communist Manifesto (Ex. 7), and *Left Wing Communism,* by Lenin (Ex. 9).

E. The excerpts from the relevant documents.

As we have pointed out in our supplemental brief (p. 4), counsel for the Government, in connection with offering exhibits at the trial, made the following statement to the Court and to counsel for Schneiderman: "We have made certain excerpts, Mr. Andersen, from the book which we have offered in evidence for the purpose of convenience, of which we will furnish you a copy for * * * in the preparation of briefs *so that you will know what particular part of the book we rely on*" (R. 109). Such excerpts were furnished, and were the only parts of the documents designated by the Government for the record, except only with respect to Exhibit 27, which was printed in the record in full.

Therefore, on the basis of the presentation made to the trial court, and on the basis of the record as prepared for the Circuit Court of Appeals within its Rule 19, the *excerpts* from the pertinent documents with which Schneiderman was familiar are the only portions of those documents constituting the real proof before the Court—so far as the documents are concerned. Since, as above shown, the only

documents that can, on the record, with propriety be considered as meeting the tests that (a) they were both published and circulated prior to 1927, and (b) that Schneiderman was familiar with them prior to 1927 and (c) that they were publications having some authoritative standing (this test excludes Ex. 17) are at very best Exhibits 7, 9 and 16, and since Exhibit 16 was barred as an expression of Communist doctrine, the Court is, we submit, limited to a consideration of the bearing on the questions here of the *excerpts* from Exhibit 7 (R. 124-127) and the excerpts from Exhibit 9 (R. 144-147).

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112100—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 311

WILLIAM SCHNEIDERMAN, ALSO KNOWN AS VELVEL SCHNEIDERMAN, PETITIONER

v.

UNITED STATES OF AMERICA

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 908–918) is reported in 119 F. (2d) 500. The opinion of the District Court (R. 39–45) is reported in 33 F. Supp. 510.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 28, 1941 (R. 919). The petition for a writ of certiorari was filed July 26, 1941. The jurisdiction of this Court is invoked under

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioner at the time of his naturalization in 1927 failed to disclose his membership in and activities for the Communist party. The United States brought suit to cancel the certificate of naturalization on the ground that it was illegally and fraudulently procured. The question is whether there is sufficient evidence to support the finding of the courts below that petitioner at the time of his naturalization did not bear allegiance to and support the principles of the Constitution and laws of the United States.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix.

STATEMENT

The United States, under 8 U. S. C., sec. 405, brought suit to cancel the certificate of naturalization issued to petitioner, a native of Russia, on the ground that it was illegally and fraudulently procured (R. 1–10). The complaint charged that at the time of his naturalization, on June 10, 1927, petitioner was not, and that during the five years prior to filing his petition for naturalization he had not behaved as, a person attached to the principles of the Constitution and well disposed to the good order and happiness of the United States, as re-

quired by 8 U. S. C., sec. 382. It further alleged that during all this time petitioner was a member of and affiliated with, and believed in and supported the principles of, certain Communist Party organizations, the principles of which were opposed to the principles of the Constitution and advised, advocated, and taught the overthrow of the Government, Constitution, and laws of the United States by force and violence (R. 4–5). An affidavit by an attorney in the Immigration and Naturalization Service, Department of Labor, made a part of the complaint (R. 3), also charged that petitioner when he took the oath of allegiance did not intend to bear true faith and allegiance to the Constitution and laws of the United States (R. 9).

Petitioner in his answer denied the material allegations of the complaint, except insofar as it charged his membership in the Communist Party of America, which he admitted (R. 11). He denied that at any time during which he was a member the Communist Party of the United States believed in or advocated the overthrow of the Government, Constitution, or laws of the United States by force or violence or otherwise, and alleged that petitioner and the Communist Party believed in, advocated, and were committed to uphold the achievements of democracy and the rights of and to life, liberty, and the pursuit of happiness, and to defend the United States Constitution against all of its enemies (R. 12–13).

The evidence may be summarized as follows:

Petitioner was born in Rumanov, Russia August 1, 1905, and entered the United State about September 22, 1908 (R. 74). He early be came interested in the principles of Communism and, since the age of sixteen years, was active i various official capacities, of increasing impor tance and responsibility, in Communist Party organizations (R. 86–98, 357–359).[1] Petitione applied for first papers when he was eighteen an became a citizen when he was twenty-one (R. 358)

Petitioner admitted that at the time of his nat uralization he desired to bring about a socialisti form of government (R. 862, 898) and that he ha consistently subscribed to the general principles o the Communist Party and the Communist Inter national (R. 92, 102–103, 108). Petitioner, how ever, testified to his belief that the Communist pro gram would be a long-range process (R. 898) an disavowed the use of force and violence (R. 862

[1] Petitioner was made educational director of the Youn Workers' League upon its organization in 1922 and later be came its chief executive officer (R. 86–87, 89–91); the League was affiliated with the Communist International (R. 9 208). Since 1924 or 1925 petitioner has been a member o the Communist party or its predecessors (R. 91, 93). Pe tioner has served as local and state secretary, as district or ganizer, and as member of the National Committee of th Communist Party (R. 94–96), which is affiliated with th Communist International (R. 13, 15, 172–174, 208, 245–24 253). He has been a candidate for office on the Communis ticket (R. 180–181).

867–868, 897–898) or allegiance to any foreign power (R. 886–887).

Much of the evidence in the record consists of books and pamphlets issued, distributed, or used by various communist organizations. Petitioner, as educational director of the Young Worker's League and as a participant in open forums, used a number of these books.[2] Other publications were introduced into evidence which were published and distributed by book stores connected with the Communist Party.[3]

These publications and supporting testimony of a former Party member would support the inferences that the Communist Party advocated the establishment of a communist form of government in the United States and the overthrow of

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[2] *N. Bucharin* and *E. Preobrazhensky*, A B C of Communism (R. 185–194, 202, 268); *Karl Marx* and *Friedrich Engels*, The Communist Manifesto (R. 124–128, 189, 206); Programme of the Communist International (R. 109–123, 206); *Nicolai Lenin*, The State and Revolution (R. 89, 129–144, 206); Left Wing Communists and Infantile Disorder (R. 89, 206, 207, 144–147); Programme of the Young Communist International (R. 152–157, 208); *M. J. Olgen*, Why Communism? Plain Talks on Vital Problems (R. 166, 220–221, 272).

[3] *I. Stalin*, Theory and Practice of Leninism (R. 212–218); Platform of the Class Struggle (R. 273); The International Youth (R. 269–270); New Frontiers (R. 273); Programme and Constitution of the Workers' Party of America (R. 275). Government evidence indicated that these stores were operated by the Party (R. 211–212) while petitioner denied that there was either ownership or control (R. 830).

the capitalistic system (R. 44, 110–115, 124, 126, 167–168, 172, 197–201, 214, 448, 871, 874); that it considered the present Constitution and form of government inconsistent with its goal (R. 256–257, 286–288, 296); and that the Party advocated the use of force and violence to accomplish its end (R. 126–127, 166–172, 174, 271, 330–331, 878–881). The Communist Party had advocated these doctrines during the relevant time of petitioner's naturalization and for five years before, through the contemporary programs and writings of Communist organizations and leaders, known to and used by petitioner (see R. 110, 112–119; 129, 137–141; 147, 153–155; 185, 191–192; 255, 256–257; 263, 267–268).

The program of the Communist International and the resolutions of the domestic Party, introduced in evidence, indicated that in the event of hostilities with Soviet Russia the Party's first allegiance would be toward the U. S. S. R. (R. 117–119, 245–246). Propagandization of the military forces was an integral part of the Communist program (R. 155, 167–168, 171). Membership in the Party was shown, by the 1938 constitution, to require undeviating recognition of the Party decisions as to policy and tactics (R. 20, 27).

Petitioner, on the other hand, testified that the Constitution and By-Laws of the American Communist Party, adopted in 1938, was the only official expression of the principles of the Communist Party (R. 364), that it overrode any

conflicting statement (R. 365–368, 834–839, 856–861), and that it represented the views which he personally had always maintained (R. 365). This constitution of the Party (R. 14–38) contains nothing inconsistent with a peaceful accomplishment of the Party objectives and states the Party's defense of the United States Constitution against its reactionary enemies (R. 14). Petitioner's evidence is to the effect that force and violence has not been advocated by the Party (R. 375–376, 461–466) but that it predicted its use by the forces of capitalism against the workers, to prevent their obtaining control of the Government, and that the Party intended its use only in defense of the popular Government (R. 401–426, 592, 679–688, 755–757). Recent statements of Communist leaders were admitted in evidence and were to the same effect (R. 427–429, 445–448, 455–456).

The district court at the conclusion of the hearing filed a memorandum opinion (R. 39–45) and findings of fact and conclusions of law (R. 47–53). The court found that the Communist Party advocated overthrow of the United States Government by force and violence, and that its principles were opposed to those of the Constitution and laws of the United States (R. 45–50). The court also found that petitioner was a member of the Communist Party at the time of his naturalization, that he bore allegiance to the U. S. S. R. rather than to the United States, and that he concealed these facts from the naturalization court. Accordingly,

the court found that petitioner for five years prior to filing his petition had not been attached to the principles of the Constitution and the good order of the United States, and that he had taken the oath of allegiance in bad faith (R. 48–52). The court therefore concluded that the decree of naturalization had been illegally (R. 48, 51) and fraudulently (R. 50, 51) procured, and entered its decree declaring void the certificate of citizenship (R. 54–55).

The circuit court of appeals affirmed (R. 919) on the ground that the certificate of naturalization was illegally procured (R. 912). It affirmed the findings of the district court that the Communist Party advocated the overthrow of the Constitution and laws of the United States by force and violence (R. 917) and that petitioner's adherence to the Party principles made incredible his testimony of support of the Constitution and allegiance to this country (R. 916, 918).

ARGUMENT

The certificate of naturalization issued upon petitioner's oath and proof that he was attached to the principles of and would support and defend the Constitution and laws of the United States, abjure all allegiance to any foreign state, and bear true faith and allegiance to the Constitution and laws of the United States (8 U. S. C., secs. 381, 382, *infra*). Upon the cancellation proceedings

the district court was required to determine whether this oath and proof were false or true.

1. The parties and the courts below have accepted without question that belief in or advocacy of force and violence is a sufficient ground for disqualification for citizenship. Whatever the philosophic and historical problems raised by such a formula, that acceptance may appropriately be followed here.[4]

The evidence on this issue, summarized in the Statement (*supra*, pp. 4–7), was conflicting. Petitioner's testimony as to his personal beliefs was necessarily placed against the doctrines of the Communist Party, of which he was an active member. That evidence, in turn, was at least partially equivocal. On the one hand there was evidence that, particularly during the period when petitioner was naturalized, the Party advocated the use of force and violence to accomplish its ends. On the other hand, petitioner's evidence was di-

[4] When one's belief in or advocacy of the utility of force and violence relates to the prediction of its defensive use by the majority in the indefinite and contingent future, that belief or advocacy may reflect simply an interpretation of history which has little relevance to the contemporary obligations of citizenship. But it is not to be expected that the government which confers the privilege of citizenship would extend that privilege to one who then believed in the use of violent means to change the character and organization of that government. In any event, petitioner's apparent acquiescence in the relevance of the "force and violence" test remove its difficulties so far as this record is concerned.

rected to showing that Communist philosophy was not one of force and violence as an initial means to achieve working-class ends, but only a prediction that it would be necessary to defend the workers against capitalist aggression; and that the recent constitution of the Party, and the recent statements of its leaders, contemplated an orderly movement of reform through peaceful and constitutional means.

Faced by this conflict in the evidence, the lower courts have drawn their inference against petitioner. Other courts have similarly ruled.[3]

2. We think it impossible for one to assume the obligations of citizenship without an undivided allegiance to the United States. The district court found that petitioner at the time of his naturalization did not intend to bear true allegiance to the United States but instead intended to maintain allegiance to the U. S. S. R. (R. 51); the circuit court of appeals confirmed this finding (R. 918). There was conflicting evidence, summarized in the Statement (*supra*, pp. 5–6), on this issue. Petitioner's testimony as to his own allegiance, and the inferences to be drawn from

[3] *Kenmotsu* v. *Nagle*, 44 F. (2d) 953 (C. C. A. 9); *Brasch* v. *Cahill*, 88 F. (2d) 545 (C. C. A. 9); *United States* v. *Tapalesangi*, 40 F. (2d) 255 (C. C. A. 3); *Jurgans* v. *Seaman*, 25 F. (2d) 35 (C. C. A. 8); *Antolish* v. *Paul*, 283 Fed. 957 (C. C. A. 7); *United States* v. *Smith*, 2 F. (2d) 90 (D. C. W. D. N. Y.); *United States ex rel. Aberra* v. *Wallis*, 268 Fed. 413 (D. C. S. D. N. Y.); *Ex parte Vilarino*, 50 F. (2d) 582 (C. C. A. 9); *Ungar* v. *Seaman*, 4 F. (2d) 80 (C. C. A. 8); *Skeffington* v. *Katzeff*, 277 Fed. 129 (C. C. A. 1).

the 1938 constitution of the Party and recent statements of Communist leaders, were contradicted by the inferences to be drawn from official communist programs of 1925 and 1929. The lower courts have resolved the issue against petitioner.

3. Whatever the difficulty of squaring a penalty for political beliefs with traditional freedom of thought and expression, that is not the issue in this proceeding. The issue here is one of citizenship and not of punishment, and the statutes properly make political beliefs and allegiance the keystone of the requirements for naturalization. And the fact that the cancellation proceedings were brought thirteen years after naturalization becomes rather less significant when it is considered that petitioner makes no claim that there has been any change in his beliefs or allegiance during this period.

4. Whether petitioner at the time of his naturalization was attached to the principles of the Constitution and laws of the United States, and bore true allegiance to the United States, is a question turning on the facts of his particular case.[8] Under ordinary canons of appellate practice, a decision confined to the four corners of a particular record presents no occasion for review by this court. Even the more general question whether membership in the Communist Party in itself disqualifies one from citizenship by naturalization cannot be

[8] Cf. *United States* v. *Macintosh*, 283 U. S. 605, 616; *Kessler* v. *Strecker*, 307 U. S. 22, 33.

isolated from the facts of the particular cases. This case, therefore, does not afford any certain occasion for a general clarification of the difficulties surrounding the content of the naturalization statutes.

CONCLUSION

The decision of the court below confirms the finding of the district court on the evidence presented by this record. At least with respect to the petitioner's allegiance, it is correct. There is no conflict of decisions or occasion for further review. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1941.

APPENDIX

8 U. S. C., sec. 381, provides:

> He [any alien] shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

8 U. S. C., sec. 382, provides:

> No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this section he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. At the hearing of the petition, residence in the county

where the petitioner resides at the time of filing his petition, and the other qualifications required by this section during such residence, shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by section 379 of this title to be included in the petition. * * *

8 U. S. C., sec. 405, provides:

It shall be the duty of the United States district attorneys for the respective districts, or the Commissioner of Immigration and Naturalization or Deputy Commissioner of Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. * * *

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 2

WILLIAM SCHNEIDERMAN, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 908–918) is reported at 119 F. (2d) 500. The opinion of the District Court (R. 39–45) is reported at 33 F. Supp. 510.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 28, 1941 (R. 919). The petition for a writ of certiorari was filed on July 26, 1941, and was granted on October 13, 1941 (R. 922). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The United States brought suit to cancel a certificate of naturalization, granted respondent in 1927, on the ground that it was illegally and fraudulently procured. The question is whether there is sufficient evidence to support the findings of the district court, generally concurred in by the court below, that petitioner at the time of his naturalization was not, and had not behaved as, a person attached to the principles of the Constitution and well disposed to the good order and happiness of the United States; that he disbelieved in or was opposed to, or was a member of an organization which disbelieved in or was opposed to, organized government; and that he did not bear true faith and allegiance to the United States.

STATUTES INVOLVED

The statutes involved are set forth in Appendix A, *infra*, pp. 129–133.

STATEMENT

The United States, under 8 U. S. C. 405, *infra*, p. 129, on June 30, 1939, filed its complaint to cancel the certificate of naturalization issued to petitioner, a native of Russia, on the ground that it was illegally and fraudulently procured (R. 1–10). The petition alleged that at the time of his naturalization on June 10, 1927, petitioner was not, and during the five years prior to filing his petition for naturalization had not behaved as, a person

attached to the principles of the Constitution and well disposed to the good order and happiness of the United States; and that during all this time petitioner was a member of and affiliated with certain communist organizations, believed in and supported principles which were opposed to the principles of the Constitution, and advised, advocated, and taught the overthrow of the Government, Constitution, and laws of the United States by force and violence (R. 2–5). An affidavit by an attorney in the Immigration and Naturalization Service, Department of Labor, made a part of the complaint (R. 3), also charged that petitioner when he took the oath of allegiance did not intend to bear true faith and allegiance to the Constitution and laws of the United States (R. 9).

Petitioner in his answer denied the material allegations of the complaint, except insofar as it charged his membership in the Communist Party of America, which he admitted (R. 11). He denied that at any time during which he was a member of it, the Party or related organizations believed in or advocated the overthrow of the Government, Constitution, or laws of the United States by force or violence or otherwise, and alleged that petitioner and the Communist Party believed in, advocated, and were committed to uphold the achievements of democracy and the rights of and to life, liberty, and the pursuit of happiness, and to defend the United States Constitution against all of its enemies (R. 12–13).

The evidence, which is set out more fully in the Argument, may be briefly summarized here as follows:

Petitioner was born in Rumanov, Russia, on August 1, 1905, and entered the United States either in 1907 (R. 72, 73) or in 1908 (R. 74). He filed his declaration of intention to become a citizen when he was eighteen (R. 72–73) and obtained a certificate of citizenship (R. 78–79) on June 10, 1927, when he was twenty-two (R. 78, 358).

In 1922, when petitioner was sixteen, he joined the Young Workers' League, and he remained a member until 1929 or 1930 (R. 86–87, 90, 860). In 1924 or 1925, at about the time he filed his declaration of intention to become a citizen, petitioner, then eighteen years old, became a member of the Workers' Party of America (R. 91, 860, 884) and has since been a member of that organization and its successors, the Workers' (Communist) Party of America and the Communist Party (R. 91–93, 98).[1]

Petitioner concededly was active in various official capacities in Communist Party organizations. He was an organizer and charter member of the Young Workers' League of California in 1922 (R. 87), and until about 1925 he was the educational director of the Young Workers'

[1] A summary of the history and nature of the various Communist organizations with which petitioner was affiliated is set out in Appendix B, *infra*, pp. 134–141.

League (R. 86–88).[2] In 1922 and in 1924 he served as a delegate to the national conventions of the League (R. 97).[3] In 1925, petitioner became City Central Secretary of the Workers' Party of America, in Los Angeles (R. 92, 175).[4] In 1928, he became District Organizer of the Young Workers' Communist League of America (R. 90–91, 176); in this capacity, he was an official spokesman for the League and directed its administrative, political, and educational affairs (R. 91). In that same year petitioner attended the Sixth World Congress of the Communist International, held at Moscow (R. 834).

From 1929 to 1930, petitioner was District Organizational Secretary of the Communist Party for District 13, comprising the States of Arizona, Nevada and California (R. 93, 96, 177–180); as such, he was in charge of dues and membership records, and, during the same period, he lectured generally on Communism (R. 93, 177, 829). In 1930, he also was District Organizer in Connecticut (R. 94). In the same year, and again in 1932, he was the Communist Party candidate for governor of Minne-

[2] Petitioner's duties as educational director were "to organize the educational activities of the League for which instructors were supplied" (R. 87, 359).

[3] Petitioner also attended the fourth national convention of the Workers' Party of America in 1925, but not as a delegate (R. 97).

[4] In this office, petitioner acted as corresponding secretary (R. 358, 359). Petitioner also occasionally wrote articles on request for the official Party newspaper (R. 101).

sota (R. 180, 363). From 1931 to 1934, petitioner was District Organizer of the Party for the Minnesota district which included Northern Wisconsin and Michigan (R. 95). In 1934, petitioner became District Organizer of the Party for the California district (R. 96), and attended the Seventh World Congress of the Communist International in Moscow (R. 95). From 1930 to 1938 petitioner was a delegate to five national biennial conventions of the Communist Party (R. 98) and since 1934 has been a member of the National Committee (R. 96). At the time of the hearing, he was California State Secretary of the Party (R. 96, 358–359) and a member of the State Central Committee (R. 363).

Petitioner testified that at the time of his naturalization he believed in the general principles of Marxism as expressed in the Manifesto (R. 123, 871–874), that he desired to bring about a "socialistic" form of government (R. 862, 898), and that ever since he was sixteen years old he has consistently "subscribed to the principles" of the Communist Party and the Communist International (R. 92, 102–103, 108), but said he believed that the "development of socialism would be a long-range process" (R. 898). Petitioner did not deny that force and violence would be required to achieve the objectives in which he believed but undertook to justify the use of such means (P 373–376, 862, 867–869, 876–877, 881–882, 885–886,

897–898). Petitioner also denied that he had borne allegiance to any foreign power (R. 886–887).

Petitioner stated that the "Constitution and By-laws of the American Communist Party," adopted in 1938 (R. 14–38), was the only official expression of the principles of that party (R. 364). But he testified in answer to a question by the court, and other evidence shows, that prior to 1938, the Party had in fact officially adopted resolutions at certain conventions (R. 837). Petitioner also stated that the 1938 constitution overrode any conflicting statement (R. 365–368, 834–839, 856–861) and that it represented the views which he personally had always maintained (R. 365). Petitioner testified, however, that, when naturalized, he fully agreed with the Program of the Communist International in so far as it interpreted general Marxian and Leninist theories (R. 108, 109); that he agreed with the 'general political conclusions adopted by the Sixth World Congress of the Communist International (1928) (R. 103); and that he was in agreement with the general program and principles of the Workers' (Communist) Party (R. 162). Since 1922, petitioner had "done all I could to educate the people in the principles of socialism" (R. 865). He considered himself to be "an expert" on Communism (R. 829). His testimony also shows that his views were not substantially different from those officially enunciated by the Party prior to 1938 concerning class conflicts

(R. 370–372, 390, 392), the existing government in the United States (R. 390, 392, 394, 864, 865, 866) and the form of government the Communists would impose in the United States (R. 376–377, 394–395, 863–864).

Much of the evidence in the record consists of books, official programs, and pamphlets issued, distributed, or used by various Communist organizations. The nature of this literature, the circumstances of its publication and distribution, and petitioner's familiarity with, acceptance, and use of it are set out in Appendix C, *infra*, pp. 142–151.

The program of the Communist International and the resolutions of the United States section were to the effect that in the event of hostilities with Soviet Russia the first allegiance of Party members was to be toward the U. S. S. R. (R. 117–119, 245–246). Agitation of the military forces was an integral part of the communist program (R. 155, 167–168, 171). Membership in the Party was shown by official programs and by the 1938 constitution to require undeviating obedience of the Party decisions as to policy and tactics (R. 20, 27; Ex. 26, pp. 5–8, 20–23, 31, 40–42, R. 274, 835; Ex. 27, p. 15, R. 264; Ex. 6, pp. 85–86, 88, 91–93, R. 109; Ex. 13, p. 128, R. 249; Ex. 12, pp. 24, 25, 93–96, R. 241).

The district court at the conclusion of the hearing filed a memorandum opinion (R. 39–45) and findings of fact and conclusions of law (R. 47–53).

The court found that petitioner was not at the time of his naturalization, and during the five-year period prior thereto had not behaved as, "a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same" as required by 8 U. S. C., sec. 382 (R. 48); and that petitioner's oath of allegiance to the United States, required by 8 U. S. C., sec. 381, was false in that petitioner maintained allegiance and fidelity to the U. S. S. R. and to the Third International (R. 51–52). The court also found that at the time of his naturalization and during the five years prior thereto, petitioner was a member of the Communist Party (R. 49), the principles of which were opposed to the Constitution, and advised, advocated, and taught the violent overthrow of the Government, Constitution and laws of the United States and disbelief in and opposition to organized government; that petitioner believed in, advocated and supported the principles of the Party (R. 49, 50, 51, 52); that petitioner was "a disbeliever in" and "opposed to organized government" and that he was a member of an organization "teaching disbelief in or opposed to organized government" (R. 48–51). The court therefore concluded that the decree of naturalization had been illegally (R. 48, 51) and fraudulently (R. 50, 51) procured, and entered its decree declaring void the certificate of citizenship (R. 54–55).

The court below affirmed (R. 919) on the ground that the certificate of naturalization was illegally procured (R. 912). It affirmed the findings of the district court that the Communist Party advocated the overthrow of the Constitution and laws of the United States by force and violence (R. 917) and that petitioner's adherence to the Party principles warranted disbelieving his testimony "as to his support of our Constitution and allegiance to this country" (R. 916, 918).

SUMMARY OF ARGUMENT

I

The Naturalization Act requires as conditions to an alien's acquisition of citizenship that the alien be, and behave as, a person attached to the principles of the Constitution and well disposed to the good order and happiness of the United States; that he be not a disbeliever in, or opposed to, organized government or a member of an organization so disbelieving or so opposed; and that he abjure all fidelity and allegiance to foreign powers and bear true faith and allegiance to this Government. There is ample evidence to establish that petitioner failed to meet each of these statutory criteria in any one of several respects.

A. The evidence shows that petitioner's primary political loyalty was to definitive political organizations known as the Communist Party and the Third Communist International, and that

he did not bear true faith and allegiance to the United States. In case of hostilities between Soviet Russia and the United States, the Party's and petitioner's first allegiance would have been to Soviet Russia. As a member of the Party, he was subject to and accepted its political control, and adherence to its political principles and tactics was required of him. Similar control was exercised and similar adherence was imposed by the Communist International upon the Communist Party and petitioner. The structure of the communist organizations, their interrelationships, and their relations with their individual members resulted, *ex necessitate*, in petitioner's owing allegiance to powers other than the United States.

Conversely, the evidence establishes petitioner's lack of true faith and allegiance to the United States. It was a fundamental communist tenet that members of the Party had no country and owed no "social patriotism" to their "own" government; accordingly, in case of war Communists were to precipitate civil war and the army was to be induced to revolt.

B. The evidence also establishes that in three independent respects, petitioner was not, and had not behaved as, a person attached to the principles of the Constitution or well disposed to the good order and happiness of the United States.

1. Petitioner was not, and had not behaved as, a

person well disposed to the good order and happiness of the United States in that it was a basic communist principle, not disavowed by petitioner but accepted by him in his general subscription to Party principles, that Party members were bound to resort generally to illegal activities which promote the communist cause whenever and wherever necessary.

2. The evidence also establishes that the Communist Party and petitioner believed in, advocated, and taught the overthrow of this Government by force and violence. The official and officially distributed communist literature introduced in evidence affords a firm basis for the district court's conclusion that the Party espoused force and violence to accomplish its objectives. It was early stated by Marx that Communism could be achieved "only by the forcible overthrow of all existing social conditions." The principle of force and violence was thereafter reiterated and emphasized, particularly during petitioner's probationary period. So fundamental with the Party was force and violence at that time that other groups or individuals who advocated ends not substantially different from those of the Party, or who even taught force and violence but without enthusiasm, were severely condemned by the Party and, if members, were expelled.

Petitioner, while not in general repudiating force and violence, testified and introduced evi-

dence to the effect that the correct interpretation, and the interpretation to which he subscribed, of the communistic views on force and violence, was that they were not advocated, i. e., desired, but only predicted as a matter of "defensive" necessity. On any one of four different theories, however, the evidence relating to force and violence requires affirmance of the decree cancelling petitioner's citizenship.

First, if, as we contend, the concurrent findings of the courts below that the Party advocated force and violence are correct, petitioner, without more and regardless of his personal beliefs, was not entitled to citizenship. At the time of his naturalization, petitioner was subject to deportation under the express provision of the Immigration Act requiring deportation of aliens who were members of an organization which advocated, or which distributed literature advocating, overthrow of the Government by force and violence. We believe that these provisions governing deportation must be considered a part of the statutory criteria for citizenship since it can hardly be supposed that Congress intended that citizenship be granted to aliens who, at the same time, were disqualified from continued residence because of their political affiliations.

Second, even if it were to be assumed that there were two interpretations of the communist views relating to force and violence, to which of these in-

terpretations petitioner subscribed was an issue of fact. The record justifies the refusal of the courts below to believe that petitioner subscribed to the interpretation which regarded force and violence as undesirable, but which nevertheless predicted their "defensive" use.

Third, in the light of petitioner's activities and relationships in respect of this literature, and because of its import, he had not *behaved* as a person attached to the Constitution or well disposed to the good order of the United States. It seems plain that the communist literature during petitioner's probationary period was at the very least reasonably susceptible of being interpreted as advocating force and violence. Such was its clear import; on its face, it drew no distinction between prediction and advocacy. Petitioner was an active member and leader of the Party; he assisted in the circulation of the literature, attended the conventions at which much of it was formulated, and taught from it. Whatever may have been his personal and then unexpressed views concerning what the literature meant, he must be responsible, for present purposes, for its plain import.

Fourth, even if petitioner's testimony that the literature was to be interpreted in the manner for which he contends, and that this interpretation represented his personal views, be accepted, such interpretation itself constituted the advocacy of

force and violence. Petitioner's principles relating to force and violence were not simply passive; force and violence were not regarded as a matter of historical inevitability. Rather the Communists themselves were to follow a prescribed program in order to create the situation in which force and violence were to occur. Since the interpretation for which petitioner contends embodied active precipitation of civil war and the overthrow of the Government by force and violence, it is not substantially different from the interpretation for which the Government contended in the courts below.

3. Petitioner was not, and had not behaved as, a person attached to the principles of the Constitution in that he wholly disapproved of the principles embodied in it and in our existing political structure. It was the view of the organization to which he belonged that American democracy is a "fraud," that the present State must be "annihilated" and an entirely new system substituted. While it is true that an alien is not disqualified from citizenship because he believes that the Constitution and the existing political structure may be improved in some or many respects, we do not believe that Congress intended that the requirement of attachment be satisfied where the alien's attitude toward the basic principles of the Constitution is one of unrelieved criticism and disapproval.

This conclusion is reinforced by the legislative history of the naturalization laws. That history plainly establishes the congressional intent to bar from citizenship aliens who have not "acquired a taste for this kind of Government." 1 Debates in Cong. (Old Series) 1789–1790, p. 1157. Since, therefore, the evidence establishes that petitioner had not accepted, but was opposed to, the principles of the Constitution, he failed to satisfy the statutory test of attachment.

C. The evidence establishes that the Communist Party disbelieved in, or was opposed to, organized government. Any State was regarded as an instrument of oppression, and, consequently, was undesirable. Accordingly, it was the communist principle that the dictatorship of the proletariat, itself an "organ of class domination," was to be only a transitional form of government, to be followed by the ultimate "disappearance" or "withering away" of the State altogether. Petitioner did not disavow the principle of the disappearance of the State and no contrary evidence was introduced on this issue; petitioner's own evidence corroborated this view. Petitioner, therefore, fell under the express disqualification of the Naturalization Act.

II

On any of these grounds, petitioner's citizenship was properly cancelled. No contrary conclusion

is to be reached from the failure of Congress to have specified in express terms communistic beliefs or affiliations, as such, as a bar to citizenship. The text as well as the legislative history of the naturalization laws make clear that Congress used broad terms such as attachment, favorable disposition, and allegiance in order to permit the courts to exercise full discretion in the premises. It was impossible for Congress to have catalogued the full range of beliefs, principles, and conduct which may bar citizenship; this has traditionally been left to the courts.

No constitutional issue of free speech or free political thought is raised by cancellation of petitioner's citizenship in this case. There is here no issue of punishment, but rather the issue of entitlement to citizenship. It is plain that Congress may make, as it always has, political beliefs, affiliations and activities the touchstone of qualification of aliens for citizenship. Congress could have transmuted the constitutional guarantees available in other instances to aliens and citizens alike into legal rights due aliens seeking citizenship, by omitting qualifications of attachment to the Constitution, political affiliations, and allegiance. Since it has not done so, but, on the contrary, has affirmatively prescribed these qualifications, the issue is foreclosed here.

ARGUMENT

I

THE FINDINGS OF THE DISTRICT COURT ARE CLEARLY SUPPORTED BY THE EVIDENCE AND ITS JUDGMENT AND ORDER CANCELLING PETITIONER'S NATURALIZATION AND CERTIFICATE OF CITIZENSHIP MUST THEREFORE BE AFFIRMED

Nature of the Issues and of the Evidence

This case does not involve any question of economic doctrines; nor any question of international relations; nor any judgment on principles of internationalism save as they relate to the requirements of our naturalization laws. The case turns on the question of petitioner's allegiance and attachment to the United States and the Constitution at the time of his naturalization in 1927.

The district court found (1) that petitioner was not, at the time of his naturalization, and during the five years preceding the filing of his petition for naturalization had not behaved as a person attached to the principles of the Constitution or well disposed to the good order and happiness of the United States (R. 48); (2) that petitioner was a disbeliever in organized government and was affiliated with an organization teaching disbelief in organized government (R. 48–49); and (3) that at the time petitioner took his oath in the naturalization proceedings, he did not intend to support and defend the Constitution and laws of the United States or

bear true faith and allegiance to the United States, but intended to and did maintain allegiance and fidelity to the Union of Soviet Socialist Republics and to the Third International (R. 51)[5]; and (4) that petitioner was not merely a member of, but that he believed in the principles of, the Communist Party, which advocated overthrow of the United States Government by force and violence, and that its principles were opposed to those of the Constitution and laws of the United States (R. 48–52). It concluded, therefore, that petitioner had obtained his certificate of citizenship fraudulently and illegally (R. 52–53).

We believe it to be clear that an alien is not entitled to citizenship, and his certificate of citizenship may be cancelled, under any one of the following conditions existing at the time of his naturalization: (1) if the alien's political allegiance was to a state or political entity other than the United States; (2) if the alien advised, advocated, believed in, or taught general resort to violation of the laws of the United States; (3) if the alien

[5] The district court further found that petitioner had fraudulently obtained his certificate in that he had concealed his membership in, and his beliefs in the principles of, the Communist Party (R. 50–51). The court below expressly put this question to one side (R. 912). We do not here discuss the question whether petitioner's certificate was procured fraudulently by virtue of alleged concealment, except insofar as it is inherently relevant to the finding that petitioner's oath of allegiance was false. (See point I. A *infra*, pp. 28–52.)

advised, advocated, believed in, or taught the overthrow of this Government by force and violence, or advised, advocated, believed in, or taught doctrines the ordinary import of which is to advise, advocate, believe in, or teach such overthrow; (4) if the alien was an active, voluntary, and knowing member of an organization which advised, advocated, believed in or taught the overthrow of this Government by force or violence; (5) if the alien advised, advocated, believed in or taught principles opposed to the fundamental principles embodied in the Constitution and political structure of the United States; or (6) if the alien disbelieved in, or was opposed to, or was a member of an organization which disbelieved in or was opposed to organized government. We believe that if any of the first five conditions obtain, an alien is not entitled to citizenship because he fails to meet the statutory qualifications of undivided political allegiance to the United States, of attachment to the principles of the Constitution, and of favorable disposition to the good order and happiness of the United States. If the sixth condition obtains, of course, the alien falls under the specific disqualification embodied in 8 U. S. C. 364 (Appendix A, *infra*, p. 129).

The findings of the trial court, adverse to petitioner on each of these issues, must remain undisturbed since they rest on substantial evidence. Under the terms of the Naturalization Act, there-

fore, petitioner's certificate of citizenship must be cancelled.

1. While this conclusion results in revoking, on the basis of his political principles, relationships, and activities, his certificate of citizenship held for 15 years, it will be fully shown below that Congress has from the very beginning made political beliefs and principles a primary test of the right to naturalization. They are of the essence of the privilege of obtaining citizenship; a privilege which must be regarded as the most precious which the Government can grant. Consequently, observance of the statutory requirements may, of course, be insisted upon. Cf. *United States* v. *Ginsberg*, 243 U. S. 472, 475.

2. Contrary to the suggestion of *amicus curiæ* (Br. 16–17, 32, 35), a judgment granting a certificate of naturalization does not preclude a subsequent reexamination of the alien's right to have obtained the certificate; every certificate is deemed to be granted on the condition that the Government may subsequently challenge it as provided in Section 15 of the Act of June 29, 1906 (Appendix A, *infra*, p. 129) and cause its cancellation unless it was obtained in compliance with the prescribed requirements. *United States* v. *Ginsberg*, *supra*, at 475; *Johannessen* v. *United States*, 225 U. S. 227, 238. The right of the Government under Section 11 of the Act of 1906 (8 U. S. C. 399) to enter an appearance and object to the granting of a nat-

uralization petition and its right under Section 15 to sue to cancel a certificate of citizenship are cumulative, and not alternative rights, afforded the Government as a protection against fraudulent or illegal naturalization.[6] *United States* v. *Ness*, 245 U. S. 319, 325–327; *Maney* v. *United States*, 278 U. S. 17, 23. The proceeding is equitable in nature, and not penal (*Luria* v. *United States*, 231 U. S. 9, 27) and may be brought at any time subsequent to the issuance of the certificate. Cf. *Johannessen* v. *United States*, *supra* (proceeding to cancel begun more than 17 years after certificate had been granted).[7] In the instant case the lapse of time is particularly insignificant when it is noted that petitioner does not claim that there has been any change in his beliefs during the intervening period. The case is not one of attributing present views to a period of time long past. Cf. *United States* v. *Wursterbarth*, 249 Fed. 908 (N. J.); *United States* v. *Darmer*, 249 Fed. 989 (W. D. Wash.); *United States* v. *Herberger*, 272 Fed. 278 (W. D. Wash.); but cf. *Rowan* v. *United States*, 18 F.

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[6] As far as this record shows, the proceeding at which petitioner obtained his certificate was *ex parte*; the United States entered no appearance or objection (cf. R. 72–79).

[7] It has uniformly been held that the cancellation proceedings may be brought at any time after naturalization. *United States* v. *Ali*, 7 F. (2d) 728, 730, motion to set aside denied, 20 F. (2d) 998 (E. D. Mich.); *United States* v. *Spohrer*, 175 Fed. 440, 448 (N. J.); *United States* v. *Parisi*, 24 F. Supp. 414, 421 (Md.); *United States* v. *Marino*, 27 F. Supp. 155, 156 (S. D. N. Y.).

(2d) 246, 248 (C. C. A. 9). Rather the issue is whether during and before 1927, when petitioner was naturalized, his own beliefs, activities, and knowing affiliations were such as to meet the requisite criteria of attachment, favorable disposition, and allegiance.

3. It should be emphasized that the inquiry into the principles to which petitioner adhered and those of the organizations of which he was a member, and the interrelationships of those organizations, must in this case be, and is, confined to the relevant period up to and about 1927, when petitioner was naturalized. Although some evidence was adduced covering a period up to 1938, such evidence was designed solely to establish the nature of the communist principles and organizations during and before 1927. The critical time here is only until 1927. We are not, therefore, concerned in this brief with what the principles of the Communist Party are today or with its present relationship, if any, to the Third Communist International. This case is directed solely to the relevant earlier period and only that earlier period is intended to be included in our discussion.

4. The evidence consists chiefly of petitioner's own statements and relevant literature,[5] in the form of documentary exhibits introduced by both the Government and petitioner. While it is normally true,

[5] The literature introduced in evidence by the Government is listed in Appendix C, *infra*, pp. 142–151.

as petitioner suggests (Br. 32), that it is unsound to impute to an organization the views expressed in the writings of all its members, or to impute such writings to each member, it will be seen that, in this case, the literature in evidence is proof not only of the beliefs, principles and teachings of the Communist Party,[9] but also of those of petitioner.

The evidence establishes that the views embodied in the literature relied upon are not the vagrant expressions of independent individuals, but that both the author and the content of the literature were subject to the specific and rigorous control of the Communist Party (see Appendix C, *infra*, pp. 142–151). Further, many of the exhibits introduced by the Government comprised official reports, resolutions, platforms and programs of the Party.[10] These exhibits, as well as other Government exhibits, were published by the Party itself or through its official agencies, were distributed by the Party itself or through its official distributors.

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[9] For the sake of brevity, we use the term "Communist Party" throughout this brief to include the Young Workers' League of America, the Young Workers' Communist League of America, the Young Communist League of America, the Workers' Party of America, the Workers' (Communist) Party of America, and the Communist Party of the United States of America, with all of which petitioner was affiliated (*supra*, pp. 4–5). For a brief summary of the history and relationship of these organizations, see Appendix B, *infra*, pp. 134–141.

[10] Such official literature is listed in Appendix C, *infra*, pp. 142–151.

and were utilized as textbooks in the Party's own classes. See Appendix C, *infra*, pp. 142–151. This evidence establishing the official nature of these exhibits, and their official publication, distribution, and use plainly warrants their examination to determine the principles and beliefs of the Party.[11] In addition, these exhibits, since official and carefully supervised by the Party, are also some indication of petitioner's own beliefs because of his membership in the Party. *United States* v. *Tapolcsanyi*, 40 F. (2d) 255, 257 (C. C. A. 3); cf. *Whitney* v. *California*, 274 U. S. 357; *United States* v. *Swelgin*, 254 Fed. 884 (Ore.). Particularly are these exhibits probative of petitioner's views in the light of the strict discipline to which Party members were subject and the rigorous requirements of undeviating adherence to its principles (*infra*, pp. 29–45). The weeding out and

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[11] Cf. *Antolish* v. *Paul*, 283 Fed. 957, 959 (C. C. A. 7); *United States* v. *Tapolcsanyi*, 40 F. (2d) 255, 257 (C. C. A. 3); *United States* v. *Smith*, 2 F. (2d) 90, 91 (W. D. N. Y.); *Skeffington* v. *Katzeff*, 277 Fed. 129 (C. C. A. 1); *Branch* v. *Cahill*, 88 F. (2d) 545 (C. C. A. 9); *In re Saderquist*, 11 F. Supp. 525, 526–527 (Me.), affirmed *sub nom. Sorquist* v. *Ward*, 83 F. (2d) 890 (C. C. A. 1); *In re Olson*, 4 F. (2d) 417 (W. D. Wash.); *United States* v. *Swelgin*, 254 Fed. 884 (Ore.).

Petitioner, however, testified that the only official statement of the principles of the Communist Party of the United States was the Party's 1938 constitution, and that all literature which was inconsistent with that constitution was not binding on the Party. We discuss this testimony below in connection with the issue to which it was directed. See, *infra*, pp. 73–76.

expulsion of dissidents was a first principle of the Party (Ex. 26, pp. 21–22, R. 274, 835; Ex. 13, p. 128, R. 249; Ex. 12, pp. 24, 25, 93–96, R. 241; see Ex. 18, p. 65, R. 166). In these circumstances, it is proper to assume petitioner's contemporary acceptance of the views expressed in the literature.

It is especially appropriate to regard this literature as expressive of petitioner's own views in the light of other evidence of his own activities and beliefs. Petitioner was not a rank and file or accidental member of the Party. He was not one who became and remained a Communist because of a vague belief that his lot would in some material aspects be better. He did not join because of some accidental chance of hearing a speech or listening to an organizer promising an improvement in his day-to-day lot.[12] Rather he joined in order to "investigate and study" the principles of Communism (R. 357). An intelligent and educated individual, he became a leader of these organizations as an intellectual revolutionary.

[12] It was a communist precept of organization to attract members by the use of "transitional slogans," and the advance of "partial demands corresponding to the concrete situation * * *. The Party must neither stand aloof from the daily needs and struggles of the working class nor confine its activities exclusively to them. The task of the Party is to utilize these minor every-day needs as a *starting point* from which to lead the working class to the *revolutionary struggle for power*." (Ex. 6, p. 79, R. 109; see also Ex. 10, pp. 38, 48, R. 152.) It may be that an individual who merely joins in the circumstances indicated by this expressed tactic stands on a different footing than petitioner.

He was active as an organizer, director, and delegate (*supra*, pp. 4–6); he attended several of the conventions at which the official programs and resolutions were adopted (*ibid.*); he used much of the literature as educational director of study classes and was generally familiar with its content.[13] And he affirmatively adhered, as a matter of deliberate and thoughtful choice, to communist principles in general, and to the principles of much of the literature (*supra*, p. 6; *infra*, pp. 99–100).

Petitioner at times purported to qualify his testimony by stating that the communist literature expressed his views in so far as it interpreted Marxism and Leninism. But petitioner did not deny, and contrary to the statement in his brief (p. 6), the evidence unequivocally shows, that there is and can be no more than one interpretation of the literature concerning communist objectives, aims and tactics, with the possible exception of the narrow issue of force and violence, and even as to this issue, it will be fully shown, *infra*, pp. 88–93, that the alleged distinction between prediction and advocacy is more apparent than real. Petitioner's contention that the courts below, by "a barefaced chain of imputations,

[13] Petitioner testified that he had read hundreds of books on the subject of Communism (R. 829). The evidence concerning his acceptance and use of, and familiarity with, the particular exhibits introduced by the Government is detailed in Appendix C, *infra*, pp. 146–151.

starting with the conflicting views of foreign writers" (Br. 32), imputed to petitioner one of two diverse interpretations of communist doctrines does not accurately reflect the record.

These several factors, we submit, warrant the use of the literature in evidence to ascertain petitioner's views at the time of his naturalization. His own testimony concerning his beliefs, to the extent inconsistent with the literature, must necessarily be measured against the documents and the evidence of his activities and of affirmative adherence to the communist principles.

A. THE FINDING THAT PETITIONER DID NOT BEAR TRUE FAITH AND ALLEGIANCE TO THE UNITED STATES IS AMPLY SUPPORTED AND THE DECREE MUST THEREFORE BE AFFIRMED

The district court found that petitioner at the time of his naturalization did not intend to bear true faith and allegiance to the United States but instead intended to maintain true faith and allegiance to the Union of Soviet Socialist Republics and to the Third International (R. 51); the court below held that petitioner's adherence to the principles of the Communist Party warranted disbelieving his testimony of allegiance to this country and, accordingly, affirmed the district court's findings on this issue (R. 916, 918). These concurrent findings are supported by evidence falling into two categories: (1) evidence establishing petitioner's subjection to primary political control and discipline of the Communist Party and of the Third Communist International; and (2) evi-

dence establishing that in still other respects petitioner lacked true faith and allegiance to the United States.

It seems plain that under the terms of the Naturalization Act an alien is wanting in the prerequisite allegiance either if his first political loyalty is to some power other than the United States, or if, irrespective of his allegiance in any other direction, his allegiance to the United States is lacking. We think that petitioner's citizenship must be cancelled in the light of the evidence under either of these categories, and that, *a fortiori,* it must be cancelled in the light of the evidence under both.

1. The evidence shows that during the relevant period petitioner was subject to the rigid political control imposed upon all members by the Communist Party, and that undeviating adherence to its principles and tactics was required of and given by petitioner. This basic principle of strict discipline was reflected in the "Statutes, Theses and Conditions of Admission to the Communist International" (1920) [14] (Ex. 26, pp. 40–41, R. 274, 835), which provided:

> In order to lead the working class successfully during the long stubborn civil

[14] This work was issued by the Workers' Party of America in 1923 and constituted the precepts of the Workers' (Communist) Party in 1925 (see *infra*, Appendix C, p. 146).

> war, the Communist Party must establish the strictest military discipline within its own ranks * * * Any delegate who in one way or another does not submit absolutely to the Party shall be expelled from the ranks of Communism.

The "Programme of the Communist International" (1928) [15] (Ex. 6, R. 109) expressed the requirements of adherence in like manner (p. 86):

> Party questions may be discussed by the members of the Party and by Party organizations until such time as a decision is taken upon them by the competent Party committees. After a decision has been taken by the Congress of the Communist International, by the Congress of the respective Sections, or by leading committees of the Comintern [Communist International], and of its various Sections, these decisions must be unreservedly carried out even if a section of the Party membership

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when petitioner was a member of that organization. While petitioner testified that he did not recall the particular edition in evidence, he did not disclaim its contents (R. 835–836).

[15] This work embodied the program adopted by the Sixth World Congress in 1928 (see *infra*, Appendix C, p. 148), which petitioner attended (R. 834). Although petitioner received his certificate of citizenship on June 10, 1927 (R. 78, 358), we submit that the "Programme," which was a statement of existing principles, was sufficiently contemporaneous to be probative of petitioner's views and of the situation which obtained a few months earlier.

> or of the local Party organizations are in disagreement with it.[16]

Petitioner was expressly subject to discipline of this nature; as a member of the Workers' Party during and after 1925, he was required to have pledged that he

> accepts the principles and tactics of the Workers Party of America and agrees to submit to its discipline (Constitution of the Workers Party of America, Ex. 27, p. 11, R. 276, Art. III, Secs. 1 and 2, R. 299–300).

In agreeing to bind himself to such discipline, he also agreed that "all decisions of the governing bodies of the Party" be binding upon him (*ibid.*, p. 15, Art. X, Sec. 1, R. 309).[17]

That, in this manner, members' primary political duty and loyalty was to the Party rather than to this country is indicated by the role assigned to members in the event that they were elected to public office. It was prescribed ("Stat-

[16] To the same effect, see Ex. 11, p. 73, R. 212; Ex. 10, p. 53, R. 152. Compare "Whoever in the least weakens the iron discipline of the party of the proletariat (especially during its dictatorship) actually aids the bourgeoisie against the proletariat" (Ex. 9, p. 29, R. 144).

[17] The provisions of the 1938 communist constitution (Ex. 5, R. 84) in respect of discipline are substantially similar. See Article III, Sec. 2 (R. 16), and Article VI, Secs. 6 and 7 (R. 20). Party members could resign from "responsible posts" only with permission of the organization which elected him "in consultation with the next higher committee." Article VI, Sec. 13 (R. 21).

utes, Theses and Conditions of Admission to the Communist International," Ex. 26, R. 274, 835; see *supra*, note 14) that (p. 52):

> Each Communist member [elected to a public legislative office] must remember that he is not a "legislator" who is bound to seek agreements with the other legislators, but an agitator of the Party, detailed into the enemy's camp in order to carry out the orders of the Party there. The Communist member is answerable not to the wide mass of his constituents, but to his own Communist Party—whether lawful or unlawful.[18]

In addition a member not only subjected himself to control of the Communist Party but also to control of the Third Communist International. Undeviating recognition of the decisions of the Third International, the parent body, was required of the Communist Party of the United States, and its members. That the Communist Party of the United States was affiliated with the Third International is not questioned (R. 379, 831; cf. R. 14, 29, 201, 202, 203, 205, 208). The significance and extent of this official affiliation is the only subject of dispute.

The basic principle of communist organization is strict subordination of national parties known as "sections" (R. 120), to the Third Com-

[18] To the same effect, see *ibid.*, pp. 41, 44–45; Ex. 14, p. 8.

munist International.[19] The Communist International was established in 1919, but it prescribed no precise regulations governing admission until, at the Second World Congress in 1920, it adopted its "Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26, R. 274, 835; see *ibid.*, p. 26). These "Statutes" declared the Communist International to be the single universal Communist Party (p. 5) and decreed that there should be only one Communist Party in each country (p. 42), to bear the name "Communist Party" of the given country "(section of the Third Communist International)" (pp. 5, 31).

Parties were permitted to join the Communist International if they adhered to the principles of the Third Communist International,[20] and if they fulfilled certain conditions, including the following (pp. 21–22): the weeding out and expulsion of all members and elements which continued to act in the spirit of the Second International, and of all members who repudiate the conditions and theses adopted by the Communist International:

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[19] The structure, organization, and composition of the Third Communist International is described *infra*, Appendix B, pp. 134–138.

[20] The application of the American Socialist Party had been rejected since it was not communist and had not given full "recognition of the dictatorship of the proletariat, and of Soviet power instead of the bourgeois democracy" (Ex. 26, p. 21, R. 274, 835).

the discussion by all local organizations, and the publication in all party periodicals, of resolutions to such effect; the transfer of all party periodicals into the hands of Communist editors; and the staffing of all Central Committees and of all chief central institutions with two-thirds of comrades who declared their adherence to a party of the Third International before the meeting of the Second World Congress of the Communist International.

Specific conditions for the ultimate full admission of sections were imposed, outlining the program and tactics to be followed by the sections (pp. 27–30). Express requirements of adherence to the Third International included: that general propaganda and the agitation of the parties correspond to the programs and decisions of the Third International (p. 27); that all parties adhering to the old "social and democratic" programs draw up a new communist program in accordance with the resolutions of the Third International (p. 30); that all parties immediately convene to discuss the conditions of admission and acquaint local organizations with the regulations of the World Congress of the Communist International (pp. 31, 32); that all party programs be subject to confirmation by the World Congress of the Communist International or the Executive Committee of the Communist International (pp.

5–6, 30–31)[21]; that all resolutions of the World Congress of the Communist International and of the Executive Committee of the Communist International be binding on all parties joining the Third International (p. 31); and that the Executive Committee of the Communist International be empowered to exclude or expel all groups which failed to comply with the international proletarian discipline and the regulations of the World Congresses (p. 7).

The "Programme of the Communist International, Together with the Statutes of the Communist International" (Ex. 6, R. 109), adopted at the Sixth World Congress of the Communist International in 1928 (R. 833, 834; see *supra*, p. 30, n. 15), reflected an expansion of the requirements of admission and discipline. The names of affiliated parties in various countries, and their number, were prescribed (Ex. 6, p. 85, R. 109). The World Congress of the Communist International retained the power to decide the program, tactics, and organizational questions connected with the activities of the various sections (p. 87). All decisions by the World Congress of the Communist International were required to be observed without qualification despite the disagreement of any section (p. 86). The Executive Com-

[21] For the nature, composition, duties and powers of the World Congress of the Communist International and its Executive Committee, see *infra*, Appendix B, pp. 136–138.

mittee of the Communist International also continued to be empowered to instruct all sections and control their activities, to make decisions binding on all sections pending appeal to the World Congress of the Communist International, to annul or amend decisions of party congresses and of central committees of parties, and to expel sections, groups, and individual members (p. 88). All programs of each section were subject to, and required, the endorsement of the Executive Committee of the Communist International; and all decisions and official documents of the Executive Committee of the Communist International were required to be published in the press of the various sections (pp. 88–89). In addition, the Executive Committee of the Communist International reserved the right to send instructed delegates to the sections; such representatives were authorized to participate in all meetings of the central bodies or local organizations of the sections, to oppose any committee whose program diverged from the principles of the Executive Committee of the Communist International, and to supervise the section's execution of the decisions of the World Congress of the Communist International and of the Executive Committee of the Communist International (pp. 89–90). The central committees of the sections were required to submit minutes of their meetings and reports of their work to the Executive Committee of the Communist Interna-

tional (pp. 91–92). Members of a section's central committee were permitted to resign only with the consent of the Executive Committee of the Communist International (p. 91). Similarly, the permission of the Executive Committee of the Communist International was a prescribed condition to the convening of a national congress by any section, and all sections were required to pay affiliation dues to the Executive Committee of the Communist International in the amount determined by it (p. 92). An International Control Commission was also established to investigate the "Communist conduct" of sections and of individual members (p. 91). Finally, it was provided that membership in a Communist Party and the Third Communist International was open only to those who accepted the program and rules of the Party and of the International and who abided by all decisions of the two organizations (p. 85).

The Workers' Party of America and the Workers' (Communist) Party of America in both of which organizations petitioner was an active member and leader (see *supra*, p. 5), were predecessors of the present Communist Party,[22] and, from 1921 to 1929, were affiliated with (R. 202, 831), comprised sections of (R. 201, 202, 203; Ex. 12, pp. 71–72, 123, 166, R. 241), and had accredited delegates to (R. 203), the Communist International, from which they received in-

[22] See *infra*, Appendix B, pp. 138–139.

structions and leadership (Ex. 12, pp. 18, 41, 63, 65–66, 166, R. 241; Ex. 13, pp. 13, 56–61, 86, 100, R. 248). Similarly the Young Communist Leagues, of which petitioner was an active leader from 1922 to 1929 (*supra*, pp. 4–5), were politically subordinate to the Communist Parties (Ex. 10, Foreword, p. 10, R. 152), and interchanged delegates with the Executive Committee of the Communist International. The Young Communist International in turn, was, at or about the time of petitioner's naturalization, designated as a section of the Communist International and subordinate to the Executive Committee of the Communist International (Ex. 6, p. 92, R. 109). The Young Workers' League of America, of which petitioner was a member, was affiliated with the Young Communist International and the Communist International (R. 90, 208; see Ex. 12, pp. 143, 144, R. 241).

Petitioner, however, testified that the Communist Party of the United States and its predecessor organizations were, during the relevant period, autonomous and independent.[23] He testified that, although these organizations were affiliated with the Communist International, the "question of the statutes became an academic question

[23] Petitioner's testimony on this issue was couched largely in terms of applicability only to the present Communist Party (R. 379–380) but analysis of the testimony indicates that he probably intended it to apply to the predecessor organizations and the period here in controversy (cf. R. 380, 831–832).

relegated to the field of theory" once the Communist Parties and the International were organized (R. 380, 831–832); that the American parties' affiliation to the International "took place under the express provision that we are not subject to and exempt from the 21 conditions of admission:" and that, accordingly, the American parties "are not obliged to carry out decisions of the Communist International" but, on the contrary, "always operated under their own rules and program" (R. 380–381; cf. R. 832). In support of his testimony, petitioner cited the 1938 constitution of the Communist Party of the United States (Ex. 5, R. 84), which provided that:

> The supreme authority in the Communist Party of the U. S. A. is the National Convention. * * * Only such a National Convention is authorized to make political and organizational decisions binding upon the entire Party and its membership * * * (Art. VIII, Sec. 1, R. 23);

and that:

> The Communist Party of the U. S. A. is affiliated with its fraternal Communist Parties of other lands through the Communist International and participates in International Congresses, through its National Committee. Resolutions and decisions of International Congresses shall be considered and acted upon by the supreme authority of the Communist Party of the U. S. A., the

> National Convention, or between Conventions, by the National Committee (Art. XI, R. 28-29).

In addition, petitioner introduced in evidence the recent statement of a leader of the Party to the effect that it was entirely independent and autonomous.[24]

The force of petitioner's evidence is destroyed by a number of factors. The record is barren of a single statement, documentary or otherwise, made during the period relevant to this case, or indeed, before 1938, relieving the American party of the admission requirements which are so clearly applicable, or of any single action of any of the organizations to which petitioner belonged qualifying their adherence. Whatever may have been the situation after 1938 [25] the absence of any resolution or other statement negating the clear terms of the "Statutes" and the 1928 "Programme" refutes petitioner's contention.

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[24] See Ex. G, telegram from Earl Browder to Chairman of New York Senate Judiciary Committee, March 15, 1939 (R. 446–447). See also the statement from "Leninism" (Ex. I, p. 83, R. 452–453) denying that "American Communists work under 'orders from Moscow' " since no Communist is "worth a cent" if he "would agree to 'work under orders' from outside against [his] own convictions and will and contrary to the requirements of the situation."

[25] As noted below, there is evidence to warrant the conclusion that, in any event, the 1938 constitution was not an entirely unambiguous statement of precepts. See *infra*, pp. 73–76.

In addition, affirmative evidence relating to the actual history of the Party during the relevant period compels the conclusion of subservience to the Third Communist International. Resolutions and other formal actions of the American parties persistently reflected, both generally and specifically, the control exercised by the International. Thus the Second National Convention of the Workers Party of America, held in 1921 (Ex. 27, Cover, R. 276), declared the basis of its policy to be the application of the policy of the International (Ex. 13, p. 13, R. 248). The "Program and Constitution of the Workers Party of America" (Ex. 27, R. 276), adopted by the Second National Convention in 1921 (Ex. 13, pp. 73–86, R. 248; Ex. 27, Cover, pp. 2–16, R. 276) and readopted in 1923–1924, when petitioner was a member of that organization (Ex. 27, Cover, R. 276), acknowledged the leadership and declared its sympathy with the principles of the International (*id.*, pp. 10, 11; Ex. 13, pp. 93, 100, R. 248; Ex. 26, Workers Party forword, inside front cover, R. 274, 835). The report of the Central Executive Committee to the Convention of the Workers' Party (1923–1924) summarized the steps taken to apply the policy of the International in the United States (Ex. 13, pp. 13, 14, 42, 43, 44, R. 48). The same report included a letter from the Executive Committee of the Communist International commenting on the past activities of the Party and instructing the Central Executive Com-

mittee of the Workers' Party of America concerning the methods of future activities (*id.*, pp. 56–61).

Formal actions on numerous issues repeatedly followed the instructions of the Executive Committee of the Communist International transmitted in this letter, and the resolutions noted the execution of such instructions (*id.*, pp. 73–86, 100–106). One resolution repeated the adherence to the Communist International (p. 100); another withdrew a previously stated policy laid down by the Party and referred the matter to the International "for decision as to the correctness of this policy" (p. 61); still another expressed doubts concerning the wisdom of a recommendation of the Executive Committee of the Communist International and requested the latter to reconsider its recommendation and refer it for consideration to the next convention of the Workers Party (p. 119).[26]

Similarly, the report of the Central Executive Committee to the Fourth National Convention of the Workers' (Communist) Party of America, 1925, and the resolutions adopted by the convention ("The 4th National Convention of the Workers (Communist) Party of America" (Ex. 12, R. 241)), which petitioner attended (R. 97), referred

[26] This is the only evidence in the resolutions or other formal actions of nonacceptance of the International's instructions. But even this request for reconsideration strongly evidences the Workers' Party subservience to the International.

to the execution of a policy which received the approval of "the Comintern [Communist International] in its resolution on the American question" (p. 10); recorded action in accordance with "the decision of the Comintern" on another issue (p. 10); reported that the "instructions of the Communist International" were carried out on a third issue (p. 18); included a new "basic activity" for the Party to "meet the criticisms by the Fifth Congress of the Comintern" (p. 19–21); repudiated certain theses which it had adopted in 1923 since they were contrary to a decision of the Comintern (p. 72); announced that factional differences in the Party were liquidated by decisions of the Communist International that wiped out the decisive political differences between the groups (p. 26); set up a new Commission "in accordance with the instructions of the Comintern" (*ibid.*); and urged the Party to assist the Central Executive Committee to "enforce * * * the decisions of the Communist International" (*ibid.*).[27] At the same convention, by motion unanimously carried, a Party member was expelled from the Workers' (Communist) Party for failure to adhere to principles laid down by the Comintern, and

[27] For the execution of various principles of the International through resolution of the Convention, see Ex. 12, pp. 63, 64, 65, 66, 70, R. 241. The resolution of the minority of the Convention refers also to many instances of Comintern direction of the activities of the Workers' (Communist) Party. See *ibid.*, pp. 66, 67.

for contempt of, and insubordination to, the Comintern (p. 96).[28]

In addition to the official resolutions and reports of the American parties, a Government witness who had been a member of the Party during the relevant period testified that the Party's Instructors' classes (R. 192–196) and neophyte classes (R. 193, 205) were taught that the Party was a section of the Communist International (R. 185, 195, 201, 205, 222), and that each member of the American section was also a member of the Communist International (R. 203). The undenied testimony of this witness was that, in fact, the Central Committee elected by the National Convention of the Communist Party of the United States in 1929 had been "immediately" ordered to Moscow and some of its members expelled (R. 204).

In the light of the evidence concerning the actual practice of the American parties prior to and contemporaneous with petitioner's naturalization

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[28] Much the same pattern is apparent in the "The Platform of the Class Struggle" (Ex. 15, R. 264) adopted at the convention of the Workers' (Communist) Party in 1928 and in the "Acceptance Speeches" (Ex. 14, R. 255) of the 1928 Communist candidates for president and vice-president in the national election. See Ex. 15, pp. 26–31, 62, R. 264. Indeed, even the Party's policy of putting up candidates for election to executive office was decided only after consultation with, and approval of, the leaders of the International (Ex. 14, p. 8, R. 255).

and probation, the conclusion is inescapable that, whatever the present situation, the organizations and their members were then subject to and had accepted the primary political control of the Third Communist International. The strict political subjection to the Communist Party, whose views, tactics, policies and principles the member, even if an official elected to public office, was obliged unquestioningly to accept,[29] exhausted his political loyalties and made impossible an oath of unreserved loyalty to the United States. It is submitted, therefore, that the primary political loyalties of petitioner, who was so active a member and leader of these organizations and who affirmatively subscribed to their general principles, were at the time of his naturalization wholly pledged by him to the Communist Party and to the Third Communist International, that he had none for the United States, and that his oath of allegiance was false.

2. Independently of, and supplementary to, our contention that his allegiance was affirmatively to the Communist Party and the Third International, we submit that, also on the basis of fundamental

[29] That the principles of discipline were not merely rhetorical is indicated by the testimony of Humphreys, a Government witness, who was expelled from the Communist Party for refusal "to take orders" and "to follow the decisions" of Party officials (R. 228). See also Ex. 12, pp. 96–98, R. 241.

communist precepts, petitioner was lacking in allegiance to the United States.[30]

The record discloses that during the period in question national loyalties to a capitalistic state were regarded as incompatible with the obligations of Party members, who were to have no "fatherland" and "no country" (Ex. 16, pp. 125, 126, R. 187; Ex. 7, p. 28, R. 124; Ex. 10, p. 45, R. 152). They were, accordingly, to renounce "social patriotism" (Ex. 26, pp. 28–29, Ex. 274, 835) and their "own" Government and country (Ex. L, pp. 12–13, R. 464; Ex. 16, pp. 124, 126, R. 187; Ex. 6, p. 83, R. 109). It was the duty of the proletariat to "destroy the bourgeois Fatherland, and not defend it or help extend it" (Ex. 16, p. 126, R. 187). That this doctrine may have been regarded as a measure of defense against apprehended aggression on the part of non-communist states is, of course, not legally relevant here, where the issue is simply petitioner's allegiance to the United States.

In the event of hostilities between the U. S. S. R.

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[30] The requisite allegiance is lacking either if the alien's allegiance is to some power other than the United States, or if he lacks allegiance to the United States. But evidence of affirmative allegiance to some other power is, of course, also evidence of a lack of allegiance to the United States. Accordingly while either of the two branches of our contentions in respect of petitioner's allegiance supports the findings of the lower courts, they also are complementary and together support such findings.

and the "imperialistic" and "capitalistic" powers [31]—

> We, members of the international proletariat, members of the exploited masses of the world, of the Communist Party and the Communist International, declare * * * we will defend the Soviet Union, which is our country—the country of the working class of the world. We will do everything in our power to rout the imperialist enemies and bring about the victory of the Red Army ("Acceptance Speeches" (1928), Ex. 14, p. 36, R. 255).[32]

Consistent with this purpose was the earlier pronouncement that—

> The Communist parties should carry on a precise and definite propaganda to induce the workers to refuse to transport any kind of military equipment intended for fighting against the Soviet Republics, and should also by legal or illegal means carry on propa-

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[31] The United States was included in the category of "imperialistic" and "capitalistic" powers. See, e. g., National Platform of the Workers' (Communist) Party, 1928, Ex. 15, p. 7, R. 264.

[32] To the same effect, see Ex. 14, p. 18, R. 255; Ex. 6, p. 65, R. 109; Ex. 15, p. 33, R. 264; Ex. 16, p. 126, R. 87. Petitioner testified that he agreed with the general program and principles of the Party at the time these speeches were made by the Communist candidates in the 1928 presidential campaign (R. 162). Although the speeches were made in 1928, we believe that they were sufficiently contemporaneous with petitioner's naturalization in June 1927 to reflect the principles of the Party during the relevant period.

> ganda amongst the troops sent against the workers' republics, etc. ("Statutes, Theses and Conditions of Admission," Ex. 26, p. 30, R. 274, 835).

A similar course was advised in the event of any "imperialistic" or "capitalistic" war, regardless of against whom waged:

> * * * Communists work with the utmost energy for the transformation of the imperialist war into a civil war in order to overthrow imperialism by means of a victorious proletarian revolution ("Programme of the Young Communist International," Ex. 10, p. 45, R. 152).[33]

To this end, in the course of such a war, the Communists were to "propagate revolutionary defeatism" and "agitate for the fraternisation of the soldiers of the imperialist armies which are arrayed against each other" (*id.*, p. 45),[34] and, as stated in another document:

> Workers in ammunition plants, go on strike! Shut down your plants! Prevent governmental strike-breakers from resuming work! Railroad men, refuse to handle war mate-

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[33] To the same effect, see Ex. 11, p. 12, R. 212; Ex. 14, p. 18, R. 255; Ex. 6, p. 83, R. 109; Ex. 16, pp. 114, 117, R. 187; Ex. 18, p. 43, R. 166.

[34] A "foremost" task of the program of the Young Communist League and the Communist Party was "revolutionary work in the bourgeois army through the organization of nuclei, revolutionary circles and groups, * * *" Ex. 10, pp. 46–47, R. 152. See also *infra*, pp. 57–58, and p. 52, n. 39.

> rials or to transport troops! Keep guard over your railroad yards and depots lest transportation facilities be used by governmental agents. Marine workers, do not load either men or ammunition! Truck drivers, refuse to assist in war work! Workers of other industries, help the strikers. Farmers, refuse to give your foodstuffs and raw materials to be used for the slaughter! ("Why Communism?", Ex. 18, p. 43, R. 166).[35]

Indeed, so fundamental was the principle that Communists were to refuse to support the war of the capitalist governments that it was one of the distinguishing characteristics between the Second International and the Third International. According to the Third International, the Second International collapsed and failed during the World War, 1914–1918, because of the "treason" of its leaders, of Social-Democrats, and of labor leaders, in supporting their respective governments during the War (Ex. 26, p. 4, R. 274, 835; Ex. 9, p. 51, R. 144; Ex. 16, pp. 121, 122, 124–126, 129, 135, R. 187; Ex. 6, pp. 6, 20, R. 109).[36]

To rebut this evidence, petitioner testified generally that the Communist Party of the United

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[35] See also Ex. 14, pp. 35–36, R. 255.

[36] Cf. "It is enough to compare the Leninist policy of transforming the Imperialist war into civil war with the traitorous policy of the Second International during the war, to understand the vileness of opportunism, the grandeur of Leninism" (Ex. 11, p. 12, R. 212).

States and its members are "obligated to defend our country [the United States] and its democratic institutions against any enemy from within or without, from at home or abroad" (R. 395).[37] He testified further that he believed that every worker has a country to which he owes allegiance (R. 876). Finally, he testified that although it "would not reflect my particular opinion[s] of such a war" he would bear arms on behalf of the United States in the event of a war against the U. S. S. R. "if required," but he believed that he "would have the right to those opinions and to express them" (R. 886–887).

We do not think that petitioner's unsupported testimony in 1939 on this issue, after the promulgation of the 1938 constitution, was sufficient to hold that the courts below were not warranted in their findings adverse to petitioner and relating

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[37] Article VI, Sec. 1, of the 1938 communist constitution (Ex. 5, R. 84) provides (R. 18–19):

> The Communist Party of the U. S. A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy whereby the majority of the American people have obtained power to determine their own destiny in any degree. The Communist Party of the U. S. A., standing unqualifiedly for the right of the majority to direct the destinies of our country, will fight with all its strength against any and every effort whether it comes from abroad or from within, to impose upon our people the arbitrary will of any selfish minority group or party or clique or conspiracy.

to 1927, the time of his naturalization (R. 51, 918).[38] His testimony and the inferences to be drawn from the 1938 communist constitution (*supra*, p. 50, n. 37) must be evaluated in the light of the official programs and literature prior to and shortly after the time when he was naturalized. These programs and the literature were known to, believed in, and used by petitioner (*supra*, pp. 23–28; *infra*, Appendix C, pp. 145–

[38] In addition to the evidence directly bearing on the issue of allegiance, other evidence relating to the Communist Party's general estimate, during the period of petitioner's probation, of the United States supports the conclusion of the courts below. These estimates were unvaryingly unfavorable. We discuss below the Communist criticism of the political structure of the United States, and its form of government (*infra*, pp. 94–98), and their concept of the existing State as an instrument of oppression by the capitalists (*infra*, pp. 71–72, 111–112). In addition, the literature in evidence is persistently and emphatically critical of every action and policy, foreign and domestic, of the United States, with which such literature deals. The literature, as well as petitioner's own testimony (cf. R. 390, 392–393, 394, 864–867), are wholly barren of any indication of approval of the Government or its actions. While we do not contend that an alien is disqualified from citizenship solely because he may find much in the actions and policies of the United States to criticize, and while we do not contend that criticism, standing alone and without other evidence concerning lack of allegiance, is decisive of the issue of allegiance, we believe that this evidence of unrelieved and fundamental criticism is corroborative of a lack of allegiance, since it can hardly be supposed that an alien can be unreservedly loyal to a nation in which he finds so much to criticize and nothing to approve.

151). The documents expressed views which, as we have noted, were fundamental to the replacement of the Second International by the Third. They unequivocally stated principles incompatible with the general principles of allegiance to which petitioner testified.[39] At most, the issue was one of petitioner's credibility, the meaning of his testimony, and the correct conclusion to be drawn from the evidence as a whole—an issue which was within the district court's competence to resolve. It cannot fairly be said that its resolution was erroneous. We believe, on the contrary, that it was correct.

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[39] Even petitioner's testimony of his willingness to bear arms must be measured against the communist principle that members should, where required, join the country's army, but for the purpose of agitating amongst the armed forces. For example, it was stated:

> The Communists reject the anarcho-syndicalist slogan of individual refusal to serve, or the "military strike." They do this in the spirit of the teaching of Lenin, who had the proletarian mother speak to her son in the following manner:
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> "You will soon be grown up. They will give you a gun. Take it and learn how to use it. This knowledge is necessary for the proletariat: not in order to shoot down their brothers, the workers of other countries, but in order to fight against the bourgeoisie of their own country, in order to put an end to exploitation, poverty and wars, not by means of pious wishes, but by victory over the bourgeoisie and by disarming it."
>
> Similarly, "Boycott of the war is a stupid phrase." (Lenin.) The effect of individual refusal to serve is to free the army from precisely the revolutionary elements of the working class, and thereby to prevent the influencing of the masses of toilers in the army by means

B. THE FINDING OF THE DISTRICT COURT THAT PETITIONER WAS NOT, AND HAD NOT BEHAVED AS, A PERSON ATTACHED TO THE PRINCIPLES OF THE CONSTITUTION AND WELL DISPOSED TO THE GOOD ORDER AND HAPPINESS OF THE UNITED STATES IS ADEQUATELY SUPPORTED, AND THE DECREE MUST THEREFORE BE AFFIRMED

The evidence supports the district court's findings (R. 48–49) that petitioner, at the time of his naturalization and during his probationary period, lacked the requisite attachment to the principles of the Constitution and a favorable disposition to the good order and happiness of the United States. This evidence establishes (1) that petitioner advised, advocated, believed in, and taught general resort to violation of the laws of the United States in order to gain the communist objectives, and that, therefore, he was not, and had not behaved as, a person "well disposed to the good order and happiness of" the United States; (2) that he advised, advocated, believed in, and taught the overthrow of this Government by force and violence, and was a member of an organization so advising, advocating, believing and teaching and that therefore he was not and had not behaved as a person well disposed to the good order and happiness of the United States or attached to the principles of the Constitution; and (3) that petitioner did not believe in, but opposed the principles of the Constitution, and therefore, he was not, and had not

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of revolutionary explanatory work and organization ("Programme of the Young Communist International," Ex. 10, p. 46. R. 152). See also Ex. 16, p. 69, R. 187; Ex. 12, p. 135. R. 241; Ex. 26, pp. 19, 28. R. 274, 835.

behaved as, a person "attached to" its principles. In each of these respects, any one of which is fatal to his petition, petitioner lacked the necessary qualifications for citizenship.

1. *The decree must be affirmed since the evidence establishes that petitioner advocated and believed in general resort to violation of the laws.*

The documents introduced into the record establish that, during the relevant period it was a basic tenet of the communist organizations that illegal means be used whenever advantageous to the achievement of their program.[40] The Communists were enjoined to "submit to only one discipline" and that the "international proletarian discipline" ("Programme of the Communist International", Ex. 6, p. 84, R. 109).[41] Accordingly, "The Programme of the Young Communist International" (Ex. 10, R. 152), with whose general "political" or "theoretical" conclusions petitioner agreed (R. 103, 108), stated (Ex. 10, R. 152, pp. 40–41):

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[40] The advocacy of resort to illegal means would seem to be a corollary of the basic communist principle, repeated throughout the literature, that the State is a particular organ of suppression of the dominated class by the ruling group, and that the State is an organization of the "exploiting class." E.g., Ex. 8, pp. 5, 11, 13, R. 129. Upon the basis of this premise, laws were regarded as the means whereby oppression is effected. Hence Communists "cannot have respect" for such laws, and illegal acts are justified. Cf. "Why Communism?" Ex. 18, pp. 61–63, R. 166.

[41] To the same effect, see "Why Communism?" Ex. 18, pp. 62–63, R. 166.

> The Y. C. L. [Young Communist League] does not limit its activity to the framework of "legality" ordained by the bourgeoisie. In its struggle against capitalism, the Y. C. L. is continually compelled to combine its open legal activity with illegal and semi-legal work and therefore to overstep the limits laid down for it by bourgeois legality.

Similarly, it was prescribed in "Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26, R. 274, 835) that (pp. 18, 28):

> For all countries, even for most free "legal" and "peaceful" ones in the sense of a lesser acuteness in the class struggle, the period has arrived, when it has become absolutely necessary for every Communist party to join systematically lawful and unlawful work, lawful and unlawful organization.
>
> * * * * *
>
> The class struggle in almost every country of Europe and America is entering the phase of civil war. Under such conditions the Communists can have no confidence in bourgeois laws. They should create everywhere a parallel illegal apparatus, which at the decisive moment should do its duty by the party, and in every way possible assist the revolution. In every country where, in consequence of martial law or of other exceptional laws, the Communists are unable to carry on their work lawfully, a combination

of lawful and unlawful work is absolutely necessary."[42]

It was announced, in sum, that "* * * revolutionaries who are unable to combine illegal forms of struggle with every form of legal struggle are very bad revolutionaries" ("'Left-Wing' Communism: An Infantile Disorder," Ex. 9, p. 76, R. 144). And opposition "in principle" to underground or illegal work, and "an unwillingness to understand the absolute necessity for a Communist Party of combining legal with illegal work" was in fact a sufficient ground for expulsion from the Party and liquidation of such opposition ("The 4th National Convention, Workers (Communist) Party of America," (1925) Ex. 12, p. 94, R. 241).[43]

The advocacy of general illegal conduct was accompanied by advocacy of particular types of illegality. The Communist Party was instructed to

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[42] See "Programme of the Communist International" (Ex. 6, p. 83, R. 109), which advises that there be "* * * every day organizational work in connection with this [the struggle against the danger of imperialist wars], in the course of which work legal methods must unfailingly be combined with illegal methods." See also Ex. 9, pp. 43–44, R. 144; Ex. M, p. 12, R. 465; Ex. 11, p. 64, R. 212 ("The revolutionary will accept a reform to unite a legal with an illegal action, to dissimulate the progress of clandestine work * * * The reformist on the contrary will accept reforms in order to rest on his laurels, will denounce all illegal work * * *").

[43] Similarly the Socialists were condemned for advising workers to "rely" on the laws and "to remain within legal limits prescribed for them by the ruling class" ("Why Communism?" Ex. 18, p. 29, R. 166).

arouse workers to "mass violation" of an injunction "whenever and wherever an injunction is issued by courts against strikers" (Ex. 12, p. 107, R. 241). Communists who achieve public office were advised to distribute arms to revolutionary workers ("Acceptance Speeches" (1928) Ex. 14, p. 8, R. 255). In the literature relating to the period here in question, the unlawful tactics were particularly to be directed toward the government's armed forces:

> Only the most reactionary petty bourgeoisie, by whatever high-sounding "democratic" or pacifist phrases it might disguise its ideas, can dispute this fact or the necessary conclusion; an immediate formation by all lawful Communist parties of unlawful organizations for systematic unlawful work, for their complete preparation at any moment to thwart any steps on the part of the bourgeoisie. It is especially necessary to carry on unlawful work in the army, navy and police * * * ("Statutes, Theses and Conditions of Admission to the Communist International," Ex. 26, p. 19, R. 274, 835).

Refusal to participate in the necessary "persistent and systematic propaganda and agitation" in the army was "equal to treason to the revolutionary cause, and incompatible with affiliation with the Third International" (*ibid.*, p. 28), and this because "it is necessary, above all things, to undermine and destroy the army in order to overcome

the bourgeoisie" ("A B C of Communism," Ex. 16, p. 69, R. 187).[44]

Although he denied generally that he was not attached to the laws of the United States (R. 362), petitioner in his testimony did not specifically advert to the evidence adduced by the Government on the issue whether the Communist Party advocated the use of illegal means, other than force and violence, to achieve its objectives. He adduced no evidence tending or designed to negate the conclusion that resort to illegal means was a tactic prescribed by the Communist Party for its members.[45]

The Party used as textbooks in the classes organized by petitioner (*supra*, pp. 4–5) much of the literature which embodies the evidence relating to illegal activities. In particular, the educational program of the Young Workers League included "The Programme of the Young Communist International" (Ex. 10, R. 152; R. 147, 208), and during the period when petitioner was its educational

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[44] See also *supra*, p. 48, n. 34; cf. Ex. 12, p. 135, R. 241; Ex. 10, p. 46, R. 152. It seems clear that these activities relating to the armed forces urged by the Party would fall within the prohibitions of 40 Stat. 219, as amended, 41 Stat. 1359, 50 U. S. C. sec. 33; 41 Stat. 801, 10 U. S. C. secs. 1538, 1539.

[45] Art. X, Sec. 5 of the 1938 constitution of the Communist Party (Ex. 5, R. 84) provided that Party members found to be "advocates of terrorism and violence as a method of Party procedure" shall be expelled from the Party (R. 368).

director it included "'Left-Wing' Communism: An Infantile Disorder" (Ex. 9, R. 144; R. 89). Both these works explicitly called for combining legal with illegal activities (*supra*, pp. 55, 56).

It is submitted that the evidence on the issue of illegal activities, coupled with the evidence concerning the strict adherence which the Party required of its members (*supra*, pp. 29–45),[46] the evidence concerning petitioner's affirmative subscription to Communist principles (*supra*, pp. 6–8), and the evidence concerning petitioner's official position and activities in the Party (*supra*, pp. 4–6), compels the conclusion that petitioner advised, advocated, taught, and believed in, the violation of the law to achieve the communist objectives.

Since this conclusion is, therefore, fully warranted by the evidence, it follows that the district court's finding that petitioner was not, and had not behaved as, a person well disposed to the good order and happiness of the United States must remain undisturbed. For it seems plain that a person who either himself believes in, teaches or advocates, or who actively participates in an or-

[46] In addition to the general principles relating to the discipline demanded of Communist Party members, it is to be recalled that refusal to participate illegally in "propaganda" and "agitation" in the armed forces itself was "equal to treason to the revolutionary cause" (*supra*, p. 57), and that failure to recognize the necessity of engaging in general illegal activities was cause for expulsion from the Party (*supra*, p. 56).

ganization which believes in, teaches, or advocates resort to illegal tactics, not as isolated acts, but as a fixed policy, has neither behaved as, nor is in fact, a person well disposed to the good order and happiness of the country the violation of whose laws are thus encouraged. On this ground alone the decree cancelling petitioner's naturalization must be affirmed.

2. *The decree must be affirmed since the evidence establishes that the Communist Party and petitioner taught, advocated and believed in the overthrow of this Government by force and violence.*

The district court found that petitioner was not, and had not behaved as, a man attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same but was a member of and believed in and supported the principles of the Communist Party and related organizations which advised, advocated, and taught the overthrow of the Government, Constitution, and laws of the United States by force and violence (R. 48, 49). A large part of the evidence in the record was related to the issue whether the Communist Party and petitioner advised achievement of its ends by force and violence, or by peaceful means.

On this issue there are, as the court below observed (R. 917), "sharply conflicting views" in the record. The difficulty does not, in general, stem from an actual conflict of factual evidence; the

basic evidence on this issue is chiefly documentary. Rather, the conflict centers upon the proper and sensible interpretation of the communist principles as expressed in these documents.

Our argument, except for this issue, is based on programs and doctrines generally of unambiguous character, to which, as we endeavor to show, petitioner subscribed, and adherence to which caused his oath of allegiance and attachment at the time of naturalization to be false. On the issue of belief in or advocacy of violent overthrow of the Government, the dispute over the meaning of the evidence in the record raises questions which it is not necessary to consider if our other arguments are accepted. Those questions are: (a) whether naturalization may be revoked for membership in an organization which is found, on a reasonable view of the evidence, to have advocated, advised, and taught violent overthrow of the Government; (b) whether, in any event, the evidence supports the finding that petitioner subscribed to, or taught, this doctrine, and hence did not have the requisite allegiance and attachment at the time of naturalization.

Before discussing these questions we shall describe the pertinent evidence and the contentions with respect thereto.

In the fountain head of communist principles and doctrines, the "Manifesto of the Communist Party" (Ex. 7, R. 124), in whose general prin-

ciples petitioner testified he believed (R. 123), it was stated (p. 44):

> The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions."

The view that the Communists were to use force and violence to achieve their objectives was thereafter repeatedly advanced in their literature:

> We Communists say that there is one way to abolish the capitalist State, and that is to smash it by force. To make Communism possible the workers must take hold of the State machinery of capitalism and destroy it ("Why Communism?", (1933–1935) Ex. 18, p. 32, R. 166).
>
> The dictatorship of the proletariat is born not of the bourgeois state of things but of * * * the development of the proletarian revolution through violence ("The Theory and Practice of Leninism," (1924–1929) Ex. 11, pp. 30–31, R. 212).

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[47] Compare from the same work (pp. 20–21):

> Though not in substance, yet in form, the struggle of the proletariat with the bourgeoisie is at first a national struggle. The proletariat of each country must, of course, first of all settle matters with its own bourgeoisie.
>
> In depicting the most general phases of the development of the proletariat, we traced the more or less veiled civil war, raging within existing society, up to the point where that war breaks out into open revolution, and where the violent overthrow of the bourgeoisie lays the foundation for the sway of the proletariat.

That which before the victory of the proletariat seems but a theoretical difference of opinion on the question of "democracy," becomes inevitably on the morrow of the victory, a question which can only be decided by force of arms ("Statutes, Theses and Conditions of Admission to the Communist International," (1923) Ex. 26, p. 15, R. 274, 835).

The working class cannot achieve the victory over the bourgeoisie by means of the general strike alone, and by the policy of folded arms. The proletariat must resort to an armed uprising (*id.*, p. 36).

The elementary means of the struggle of the proletariat against the rule of the bourgeoisie is, first of all, the method of mass demonstrations. Such mass demonstrations are prepared and carried out by the organized masses of the proletariat, under the direction of a united, disciplined, centralized Communist Party. *Civil war is war.* In this war the proletariat must have its efficient political officers, its good political general staff, to conduct operations during all the stages of that fight.

The mass struggle means a whole system of developing demonstrations growing ever more acute in form, and logically leading to an uprising against the capitalist order of the government. In this warfare of the masses developing into a civil war, the guiding party of the proletariat must, as a general rule, secure every and all lawful positions, making them its auxiliaries in the

revolutionary work, and subordinating such positions to the plans of the general campaign, that of the mass struggle (*id.*, p. 47)."[48]

"An oppressed class which does not endeavour to possess and learn to handle arms would deserve to be treated as slaves. We would become bourgeois pacifists or opportunists if we forget that we are living in a class society, and that the only way out is through class struggle and the overthrow of the power of the ruling class. Our slogan must be: 'Arming of the proletariat, to conquer, expropriate and disarm the bourgeoisie.' Only after the proletariat has disarmed the bourgeoisie will it be able, without betraying its historic task, to throw all arms on the scrap heap. This the proletariat will undoubtedly do. But only then, and on no account sooner" ("Programme of the Young Communist International," Ex. 10, p. 43, R. 152).

The tenet that the Communists must achieve their objectives only by force and violence and not by

[48] Compare the statement concerning Lenin's reply to the question whether the Communist Party's program should include nominating candidates for executive and administrative offices: "Comrade Lenin replied to us that in his opinion the action of Eichorn in the revolutionary crisis in Germany, in taking the post of the chief of police of the city of Berlin and utilizing that post to pass out arms to the workers of Berlin was the answer to our problem." "Acceptance Speeches," Ex. 14, p. 8, R. 255.

peaceful means was declared applicable to the United States as well as elsewhere:

> Marx's limitation with regard to the "continent" has furnished the opportunists and mensheviks of every country with a pretext for asserting that Marx admitted the possibility of a peaceful transformation of bourgeois democracy into proletarian democracy, at least [in] some countries (England and America). Marx did in fact recognize the possibility of this in the England and America of 1860, where monopolist capitalism and Imperialism did not exist and where militarism and bureaucracy were as yet little developed. But now the situation in these countries is radically different; Imperialism has reached its apogee there, and there militarism and bureaucracy are sovereign. In consequence, Marx's restriction no longer applies ("The Theory and Practice of Leninism," Ex. 11, p. 32, R. 212. Cf. "The State and Revolution," Ex. 8, p. 26, R. 129).

So integral was the principle of the utilization of force and violence that the Communists sharply distinguished themselves from, and strongly denounced, other groups whose objectives might, in general, coincide with those of the Communists, but who subscribed to the belief that the means are to be peaceful:

> Fifth, in the same work of Engels, * * * there is also a disquisition on the nature of a violent revolution; and the historical ap-

preciation of its role becomes, with Engels, a veritable panegyric of a revolution by force. This, of course, no one remembers. To talk or even to think of the importance of this idea, is not considered respectable by our modern Socialist parties, and in the daily propaganda and agitation among the masses it plays no part whatever. Yet it is indissolubly bound up with the "withering away" of the state in one harmonious whole. Here is Engels' argument:

"That force also plays another part in history (other than that of a perpetuation of evil), namely a *revolutionary* part; that as Marx says, it is the midwife of every old society when it is pregnant with a new one; that force is the instrument and the means by which social movements hack their way through and break up the dead and fossilized political forms—of all this not a word by Herr Duehring. Duly, with sighs and groans, does he admit the possibility that for the overthrow of the system of exploitation force may, perhaps, be necessary, but most unfortunate if you please, because all use of force, forsooth, demoralizes its user! And this is said in face of the great moral and intellectual advance which has been the result of every victorious revolution! * * * And this turbid, flabby, impotent, parson's mode of thinking dares offer itself for acceptance to the most revolutionary party history has ever known." ("The State and Revolution," Ex. 8, pp 14–15, R. 129.)

> The necessity of systematically fostering among the masses this and only this point of view about violent revolution lies at the root of the whole of Marx's and Engels' teaching, and it is just the neglect of such propaganda and agitation both by the present predominant Social-Chauvinists and the Kautskian schools that brings their betrayal of it into prominent relief ("The State and Revolution," Ex. 8, p. 16, R. 129).[49]

Nor were force and violence advocated simply as a necessary means; they were also urged for their purgative effect:

> Hence, revolution is not only necessary because there is no other way of overthrow-

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[49] The Socialists are also condemned for failure to advocate force and violence. See Ex. 14, p. 37, R. 255; Ex. 7, p. 40, R. 124. See also the severe criticism by Engels of the Anti-Authoritarians, quoted in "The State and Revolution" (Ex. 8, p. 44, R. 129):

> These gentlemen, have they ever seen a Revolution? Revolution is an act in which part of the population forces its will on the other parts by means of rifles, bayonets, cannon, i. e., by most authoritative means. And the conquering party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionaries. Had the Paris Commune not relied on the authority of the armed people against the bourgeoisie, would it have lasted longer than a single day? May we not rather censure the Commune for not having made sufficient use of this authority? And so, either the Anti-Authoritarians themselves do not know what they are talking about, in which case they merely sow confusion; or they do know what they are talking about, in which case they are betraying the proletariat. In either case they serve only the interests of reaction.

> ing the *ruling* class, but also because, only in the process of revolution is the *overthrowing* class able to purge itself of the dross of the old society and become capable of creating a new society ("Programme of the Communist International," Ex. 6, p. 52, R. 109).[50]

For reform was said to be "only an accessory" of the revolution, which was the primary objective:

> With the Reformist, reform is everything, whilst in revolutionary work it only appears as a form. This is why with the reformist tactic under a bourgeois government, all reform tends inevitably to consolidate the powers that be, and to weaken the revolution.
>
> With the revolutionary, on the contrary, the main thing is the revolutionary work and not the reform. For him, reform is only an accessory of revolution ("The Theory and Practice of Leninism," Ex. 11, p. 64, R. 212).

Petitioner did not, in general, repudiate the Government's evidence[51] on the issue of force and vio-

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[50] Compare Engels' estimate of Duehring, quoted in Lenin's "The State and the Revolution" (Ex. 8, p. 15, R. 129), *supra*, p. 66.

[51] Petitioner did, however, testify that any literature conflicting "with the basic principles" of the 1938 communist constitution was not representative of the Party view or binding on the members (R. 364, 365, 368, 836–837). For a discussion of this contention, see *infra*, pp. 73–76. In any event, the 1938 constitution itself embodied the principles

lence, nor did he attempt to negative the conclusion that he and the Communists regarded force and violence as the decisive factor in achieving their objectives. Petitioner did testify that Marx, Engels, and Lenin believed that under certain conditions and in certain countries, it was possible to achieve Communism by peaceful means (R. 375, 868; cf. R. 528, 720, 754–755). He further testified that the Communists hoped to attain their ends peacefully, but that although "amending the Constitution may provide for that, * * * that is, as I see it, a purely academic question" because the "governing group in power today" will not

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of force and violence. Although we stated in our brief in opposition to the petition for certiorari (p. 7) that there was nothing inconsistent in the 1938 constitution with the achievement of the communist objectives by peaceful means, further consideration leads us to the belief that this statement was in error. The constitution announced that the Party advocated "the establishment of Socialism according to the scientific principles enunciated by the greatest teachers of mankind, * * * embodied in the Communist International" (R. 15). We have set out in the text the views of the teachers named in the constitution ("Communist Manifesto," Ex. 7, R. 123; "The State and Revolution," Ex. 8, R. 129, and " 'Left-Wing' Communism: An Infantile Disorder," Ex. 9, R. 144 (see also Ex. L, R. 464, and Ex. P, R. 474); "The Theory and Practice of Leninism," Ex. 11, R. 212) and of the Communist International ("Statutes, Theses and Conditions of Admission," Ex. 26, R. 274, 835; "Programme of the Communist International," Ex. 6, R. 109; and "Programme of the Young Communist International," Ex. 10, R. 152), relating to the use of force and violence.

permit the institution of a "socialistic system" in the United States (R. 897, 375; cf. R. 867).[52]

In the main, however, petitioner's evidence was directed toward establishing that the communist philosophy is properly to be interpreted not as advocating, i. e., desiring, force and violence as an

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[52] Petitioner's skepticism concerning the possibility of achieving Communism by peaceful means in the United States coincides with the doubts expressed by other spokesmen (cf. R. 721; see *supra*, pp. 64–65).

Petitioner suggests, however, that the right to resort to revolution is entirely consistent with accepted American principles, and that it is a right embodied in the Declaration of Independence and emphasized by Jefferson and Lincoln (R. 372, 396–397, 885; see *infra*, p. 99). But the revolution which petitioner contemplates bears no relation to the revolution approved by the Declaration, Jefferson and Lincoln. The Declaration of Independence enunciates the right of revolution of the people "whenever any form of government becomes destructive of these ends"—and "these ends" of Government which the Declaration describes are to secure "certain unalienable rights" which "are endowed by" the Creator. Revolution is, therefore, justified in these circumstances. But the record in this case is barren of any suggestion that petitioner so circumscribed the right of revolution: rather, he believed in the right of a minority (see *infra*, p. 93, n. 75) to overthrow any government which rejected the materialistic determinism advocated by Marx. Indeed, the very government which petitioner sought to create by revolution would be "destructive of these ends": The traditional freedoms embodied in the Bill of Rights were to be denied "the bourgeoisie"; "class enemies" were to be deprived of their "political rights"; and minorities were to lose their rights of representation (see *infra*, p. 95). For the purposes of the Communist Party and its members were stated to be "purposes utterly antagonistic to the purposes for which American democracy, so-called, was formed" (Ex. 14, p. 7, R. 255).

initial means to achieve its realization, but only as a prediction that force and violence would be necessary to defend the workers against capitalists' refusal to accept communism. Petitioner testified that such was his view of the communist philosophy (R. 375, 868–869, 897). Other evidence, embodied in the testimony of expert witnesses (R. 543, 562, 577–578, 618, 638, 663, 754–755, 757) and in recent statements of Communists (R. 427–429, 445–448, 455–456), similarly supported the view that the communist attitude toward force and violence is not one of advocacy, in the sense that they desire it, but simply one of preparedness for the necessarily inevitable use of such means.

Broadly stated, the interpretation concerning force and violence for which petitioner contends is as follows: While it may be preferable and desirable to attain the ends of the Communist Party by peaceful means (R. 372–375, 640–641), attainment by such means is impossible. The impossibility derives from the fact that the "ruling class" will not permit the achievement of the communist ends. Instead, they will use every means of force and violence to resist the Communists (R. 529, 539, 543, 562, 663).[53] Accordingly, the Communists must, in turn, meet the force and violence of the "exploiters" or the "ruling class" by their own force and violence (R. 200, 414–416, 539, 562, 663). But the

[53] Some of the excerpts submitted in evidence by the Government also seem to support this interpretation. Cf. R. 190.

"first user[s]" of violence is the "capitalistic government" (R. 200). This sequence of events the Communists do not advocate; it is simply their prediction based on historical experience (R. 372–375, 407–414, 423, 529, 539, 876–877, 897).[54]

A corollary to the distinction between advocacy and prediction is that the very existence of the State presupposes a present oppression of the dominated class by force and violence (R. 132, 394, 864, 865, 866; Ex. 6, p. 29, R. 109; Ex. 8, pp. 5, 13, 63, R. 129; Ex. 13, p. 4, R. 249; Ex. 16, p. 75, R. 187). Democracy itself is "an organization for the systematic use of *violence* by one class against the other" (Ex. 8, p. 59, R. 129). Therefore, even the *present* enforcement of a Government's laws, coupled with the force and violence which the Government is in a position to use through its armed forces and

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[54] This view is, perhaps, most vividly presented in a quotation from John Strachey, "The Coming Struggle for Power" (1935), read into the record by petitioner (R. 414–415):

> "If I might use a simile I might say that when sitting on the seashore, I might take the view that the tide would come up and wet my clothes but this would not mean that I should favor or advocate the coming up of the tide."
>
> I believe that this difference between *predicting* that the abolition of the capitalist system will involve violence, and *advocating* or *desiring* such violence, is a distinction of primary importance. For no one could deny that communists do predict that violence will take place. But such prediction does not mean that they have ever dreamt of advocating or desiring violence.

police, constitute a *present* use of force and violence by capitalism. And accordingly, force and violence have already been initiated by the State, and "counterforce" is justified [55] (R. 375).

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[55] Compare "Why Communism?," Ex. 18, p. 61, R. 166:

"But this is force and violence," somebody will contend. "Don't you Communists know that the use of force and violence is wrong?" We reply to this first, that if being a "red-blooded American" means anything, it means that you must not take punishment lying down, that you must offer resistance; secondly, that it is not the workers but the capitalists and their State that start the use of force and violence. When you wish to stay on in your place of work and the employer who wants you "fired" sends for the watchman and has you thrown out, it is he that uses force. When you wish to stay on in the apartment of a house you and the like of you have built, and the landlord calls the sheriff to evict you, it is he that uses force. When you go out on a demonstration in the open in front of a governmental office and the government sends the police and armed thugs to beat you up and disperse you, it is the government that is using force. When you are thrown in jail for refusing to transport ammunition in time of war, it is the government that is using violence against you. Force and violence are the daily bread of the exploiters and their government in dealing with the exploited. Force and violence are the very essence of the State. When the warehouses are bulging with foodstuffs you and the like of you have produced while you, the hungry, are kept from them by the armed force of watchmen and police, force and violence are used against you. How can you live and breathe if you do not resist? How can you defend your fundamental interests if you do not defy boss restrictions? To defy boss restrictions, to resist the attacks of the enemy class is just as natural for the working class as it is for a red-blooded human being not to take punishment lying down.

(a) Whatever question there may be in respect of petitioner's personal beliefs concerning force and violence, it seems clear that the concurrent findings of the courts below (R. 49, 917) that the Communist Party and related organizations of which petitioner was a member or with which he was affiliated, advised, advocated, and taught the overthrow of the Government by force and violence are not erroneous. The evidence relating to this issue (*supra*, pp. 61–68) plainly supports, if it does not compel, the interpretation that force and violence are advocated; indeed, we do not understand that petitioner contends otherwise although he does contend that a different interpretation is the correct one and the one to which he subscribes.

Article X, Section 5, of the 1938 constitution of the Communist Party (Ex. 5, R. 84) provides for the expulsion of members "found to be * * * advocates of terrorism and violence as a method of Party procedure, * * *" (R. 28). Petitioner testified (R. 364–365, 368) that this constitution is the only official expression of the principles of the Party, and that all other literature or documents inconsistent with it are, therefore, not binding on the Party.[56] But as we have noted (*supra*, p. 68, n. 51), the constitution also

[56] Petitioner testified only that the Party operated under no official written program until 1938 (R. 364–365, 836–837; but cf. R. 861). His conclusion was based on hearsay (R. 861) and in answer to a question by the court he admitted that prior to 1938 the Party had in fact officially adopted resolutions at certain conventions (R. 837). That there

incorporates, by reference, the principles of Marx, Engels, and Lenin, "embodied in the Communist International"; these principles, as we have seen, themselves included the advocacy of force and violence (*supra,* pp. 61, 62, 65–66, 68). But in any event, we submit that petitioner's statement that all literature inconsistent with the 1938 constitution is not binding on the Party does not foreclose the issue.

The constitution was adopted in 1938, eleven years after petitioner was naturalized. It is, therefore, at most only slight evidence of the principles of the Communist Party and its predecessors in 1927 and the relevant prior years. And it is not persuasive. The documents upon which the Government relies in respect of the issue of force and violence are contemporaneous with petitioner's probationary period and naturalization. They

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was no official program at all for almost 20 years is scarcely credible in the light of the communist principle that there must be a program:

> What is a Program?
>
> Every party pursues a definite end, be it a party of landlords or capitalists, be it a party of workers or peasants—the same thing holds. Every party must have its aims, otherwise it is not a party * * *.
>
> *All those aims which a party strives to realize, while representing the interests of its class, constitute a party program.* In the program is therefore shown what a certain class aspires to. In the program of the Communist Party is consequently shown what the workers and poor peasants strive for. A program is a most important thing for a party ("A B C of Communism," Ex. 16, pp. 8–9, R. 187).

are, in addition, on their face, official programs and expressions, or were officially circulated and utilized as textbooks by the Communist Party and related communist organizations (*supra*, pp. 23–28; see Appendix C, *infra*, pp. 142–151). Further, the force of the 1938 constitution is doubtful in the light of the Party's previously expressed principle to engage in opportunistic deviations in position, and to dilute its slogans and programs, where circumstances demanded it:

> The Bolshevisation of our Party must accomplish four general purposes:
>
> * * * * *
>
> (b) It must develop within the Party and its membership an ability for maneuvering and campaigning in accord with the momentary needs and the possibilities of the class struggle.
>
> A Communist Party must be able to maneuver and to adapt its tactics at all times to changing conditions. Changing conditions in the proletarian struggle for emancipation must not bring confusion into the ranks of the Party but must be met by a Leninist appraisal of the new facts and if necessary by a speedy change of the methods of struggle "The 4th National Convention, Workers (Communist) Party of America" (1925), Ex. 12, p. 91, R. 241).[57]

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[57] Compare "'Left-Wing' Communism: An Infantile Disorder." Ex. 9, p. 52, R. 144:

> To carry on a war for the overthrow of the international bourgeoisie, which is a hundred times more diffi-

In these circumstances, we submit that even were the 1938 constitution inconsistent with advocacy of force and violence, it could not destroy the force of the evidence adduced by the Government to establish that the Party, between 1922 and 1927, advocated force and violence.

It cannot be gainsaid that language used in some communist literature in respect of force and violence is susceptible of an interpretation more rhetorical than literal. See Anderson, J., in *Colyer* v. *Skeffington*, 265 Fed. 17, 59 (Mass.), reversed *sub nom. Skeffington* v. *Katzeff*, 277 Fed. 129 (C. C. A. 1).[58] But since the Party saw fit to use explosive words of general application which

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cult, prolonged, and complicated than the most stubborn of ordinary wars between states; and to refuse beforehand to maneuver, to utilize the conflict of interests (even though temporary) among one's enemies; to refuse to temporise and compromise with possible (even though transient, unstable, vacillating, and conditional) allies—is not this ridiculous in the extreme? Is it not as though, in the difficult ascent of an unexplored and heretofore inaccessible mountain, we were to renounce beforehand the idea that at times we might have to go in zig-zags, sometimes retracing our steps, sometimes giving up the course once selected and trying various others?

See also Ex. 9, pp. 50, 58, R. 144; Ex. 11, pp. 57, 60, R. 212; Ex. L., pp. 12, 14–15, R. 464. On the necessity of diluting the Party slogans for popular consumption, see "Programme of the Communist International," Ex. 6, p. 79, R. 109.

[58] Compare Evatt, J., *obiter*, in *The King* v. *Hush, Ex parte Devanny*, 48 C. L. R. 487, 516–518 (H. C. Australia, 1932).

in their ordinary sense fairly import that the Party believed in, advocated, and taught the overthrow of this Government by force and violence when appropriate opportunity presented, there is no occasion, at least where the issue is the principles of the Party itself, for a court to refine and construe the language so as to reach a different result." Cf. *United States ex rel. Abern* v. *Wallis*, 268 Fed. 413, 413–414 (S. D. N. Y.); *Antolish* v. *Paul*, 283 Fed. 957, 959 (C. C. A. 7); *Kenmotsu* v. *Nagle*, 44 F. (2d) 953, 955 (C. C. A. 9), certiorari denied, 283 U. S. 832.

Comparable evidence has, without any exception insofar as we have been able to find, been held to sustain the same findings which were made by the courts below in respect of force and violence.[60] *In*

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[59] We urge at a later point in this brief (*infra*, pp. 88–93) that even the interpretation in which petitioner testified he believed, and which he testified was the proper interpretation of the communist literature, itself constitutes the advocacy of force and violence. If this is so, *a fortiori* the conclusion of the courts below that the Party advocated force and violence is correct.

[60] Some cases apparently go to the extent of holding that even in the absence of evidence concerning force and violence, the Communist Party will as a matter of law be presumed to advocate force and violence. *United States ex rel. Yokinen* v. *Commissioner*, 57 F. (2d) 707 (C. C. A. 2), certiorari denied, 287 U. S. 607; *United States* v. *Perkins*, 79 F. (2d) 533 (C. C. A. 2); *United States ex. rel. Fernandas* v. *Commissioner of Immigration*, 65 F. (2d) 593 (C. C. A. 2); *United States* v. *Reimer*, 79 F. (2d) 315, 316 (C. C. A. 2); *Ungar* v. *Seaman*, 4 F. (2d) 80, 81 (C. C. A. 8); *Ex parte Jurgans*, 17 F. (2d) 507, 511 (Minn.), affirmed.

re Saderquist, 11 F. Supp. 525, 526–527 (Me.), affirmed *sub nom. Sorquist* v. *Ward*, 83 F. (2d) 890 (C. C. A. 1); *Vajtauer* v. *Commissioner of Immigration*, 273 U. S. 103; *Skeffington* v. *Katzeff*, 277 Fed. 129 (C. C. A. 1); *United States* v. *Curran*, 11 F. (2d) 683 (C. C. A. 2), certiorari denied *sub nom. Vojnovic* v. *Curran*, 271 U. S. 683; *Kenmotsu* v. *Nagle*, 44 F. (2d) 953 (C. C. A. 9), certiorari denied, 283 U. S. 832; *Sormunen* v. *Nagle*, 59 F. (2d) 398 (C. C. A. 9); *Saksagansky* v. *Weedin*, 53 F. (2d) 13 (C. C. A. 9); *Branch* v. *Cahill*, 88 F. (2d) 545 (C. C. A. 9); *Antolish* v. *Paul*, 283 Fed. 957 (C. C. A. 7); *Ex parte Vilarino*, 50 F. (2d) 582 (C. C. A. 9); *Kjar* v. *Doak*, 61 F. (2d) 566 (C. C. A. 7); *Berkman* v. *Tillinghast*, 58 F. (2d) 621 (C. C. A. 1); *United States* v. *Smith*, 2 F. (2d) 90 (W. D. N. Y.); *United States ex rel. Abern* v. *Wallis*, 268 Fed. 413 (S. D. N. Y.).[61] Cf. *Rex* v. *Buck*, [1932] 3 D. L. R.

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25 F. (2d) 33 (C. C. A. 8); *United States ex rel. Fortmueller* v. *Commissioner of Immigration*, 14 F. Supp. 484, 487 (S. D. N. Y.); *Murdock* v. *Clark*, 53 F. (2d) 155, 157 (C. C. A. 1); *Wolck* v. *Weedin*, 58 F. (2d) 928 (C. C. A. 9); *contra*, *Ex parte Fierstein*, 41 F. (2d) 53, 54 (C. C. A. 9).

[61] The only case which we have found which has held that the evidence was insufficient to sustain the finding that the Communist Party advocated the overthrow of the Government by force and violence is *Ex parte Fierstein*, 41 F. (2d) 53 (C. C. A. 9). But the only supporting evidence in that case was the bare statement of the arresting detective that the Party did so advocate (pp. 53–54). No communist literature or other evidence was in the record in that case (*id.*). Cf. *Strecker* v. *Kessler*, 95 F. (2d) 976, 977 (C. C. A. 5), affirmed, with modification, on other grounds, 307 U. S. 22.

97 (Ont. Ct. App., 1932); *Re Worozcyt et al.*, 58 Can. Cr. Cas. 161 (Sup. Ct. Nova Scotia, 1932).

If, as we contend, the finding of the district court that the Communist Party advocated the overthrow of the Government by force and violence must remain undisturbed, we submit that under the pertinent statutes in effect when petitioner acquired his citizenship the decree cancelling his certificate must be affirmed on the basis of that finding alone and irrespective of petitioner's personal beliefs.

At and before the time petitioner was naturalized, he was subject to deportation. The Immigration Act (8 U. S. C., sec. 137; 40 Stat. 1012, 41 Stat. 1008) in effect during petitioner's probationary period required that aliens be deported if found to be members of or affiliated with any organization which (1) believes in, advises, advocates, or teaches the overthrow by force and violence of this Government, or (2) "writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or [which] has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter" advising, advocating, or teaching the overthrow of the Government by force and violence (Appendix A, *infra*, pp. 131–132).

It is clear that petitioner fell within this class of deportable aliens if, as we contend, the finding

that the Communist Party advocated force and violence is correct. It is further clear that, since the Immigration Act required the deportation of any alien who was found to be a member of an organization which distributed, circulated, or published *any* literature which advocated force and violence, petitioner was also deportable on this ground: It can scarcely be questioned that at least *some* of the literature which we have discussed above (*supra*, pp. 61–68) may reasonably be interpreted as having advocated force and violence.[62]

Since petitioner, up to the very moment of his naturalization, was deportable on these grounds, he was disqualified from citizenship. The naturalization laws must be read in the light of the deportation laws, and the requirements of the latter may fairly be imported into the former. Cf. *United States* v. *Thind*, 261 U. S. 204, 215.[63] It would seem plain that Congress did not intend to grant citizenship to an alien whom it declared to be deportable on political grounds; if an alien is subject to deportation because of his political affiliations which are deemed to disqualify him from continued residence in the United States, *a fortiori*

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[62] This literature was "published," "circulated" and "distributed" by the Communist Party; and such publication, circulation and distribution occurred during the pertinent period. See Appendix C, *infra*, pp. 142–151.

[63] See also *United States* v. *Kreticos*, 40 F. (2d) 1020, 1023, (App. D. C.); cf. *Brymer* v. *United States*, 83 F. (2d) 276 (C. C. A. 9); *In re Demanis*, 21 F. (2d) 876 (E. D. Mich.).

he cannot be entitled to the higher privilege of citizenship. To conclude otherwise is to hold that Congress has constructed the laws governing aliens in such a manner as to require the perpetuation of error.[64]

(b) Independently of our contention that petitioner was disqualified from obtaining citizenship merely by reason of his membership in an organization which advocated the overthrow of this Government by force and violence, petitioner's own beliefs in respect of force and violence disqualified him. Petitioner's position (Br. 31–35) is that whatever may be the court's holding relating to the interpretation of the communist material bearing on force and violence, he did not believe that the Party advocated force and vio-

[64] The Nationality Code of 1940 (Act of October 14, 1940, c. 876, Title I, sec. 305, 54 Stat. 1141; 8 U. S. C. 705 (b)) expressly provides that aliens who are members of organizations which advocate the overthrow of the Government by force and violence are thereby disqualified from obtaining citizenship. It cannot be inferred, however, that Congress intended to change the law in this respect by passage of the Nationality Code, or that it indicated that until 1940, such aliens were nevertheless entitled to citizenship. The legislative history of the Code shows clearly that it was intended primarily to codify existing law. See H. Rep. No. 2396, 76th Cong., 3d Sess. (1940), p. 1; see also 86 Cong. Rec. 11939, 11942, 11947, 11949. And at the time of the enactment of the Code, Congress had before it the uniform decisions of the courts that such aliens are deportable (see cases cited at pp. 78–79, *supra*), and a *fortiori* are not entitled to be naturalized (see pp. 79–81, *supra*).

lence; nor did he advocate force and violence.[65] On the contrary, according to petitioner's testimony, his personal belief was only that force and violence were inevitable (see *supra,* pp. 69–71).

The evidence in the record, however, supports the conclusion that petitioner during the relevant period did, in fact, subscribe to the interpretation concerning force and violence for which the Government contends and not to the interpretation for which he now contends. To which of the interpretations petitioner subscribed is, basically, an issue of fact. Several factors support the rejection of petitioner's testimony.

The first is the same factor which casts doubts on the 1938 Communist constitution (*supra,* pp. 73–76): the principle, then prescribed by the communist literature, of opportunistic deviation in tactics and dilution of expressed views where and as the circumstances demanded. This principle can fairly be imputed to petitioner, since it was most clearly announced in "'Left-Wing' Communism: An Infantile Disorder" and in "The

[65] The problem of varying interpretations is limited to the issue of force and violence since, in the light of the exhibits embodying Strachey's writings, and the testimony of Professors Brown and Thompson, it seems clear that the communist literature has been given more than one interpretation only on this issue. There is no dispute about the *meaning* of the literature in respect of the other issues, and for reasons stated at pertinent points, petitioner must be held to have subscribed to the principles expressed in such literature.

4th National Convention, Workers (Communist) Party of America" (*supra,* pp. 75–76). The former volume was one familiar to petitioner (R. 143) and was one of the texts used in the educational program of the Young Workers' League during the time petitioner was educational director of the League (R. 89). The Report of the Fourth National Convention was an official publication, distributed by the Party as an official document (R. 240–241). It embodied the resolutions and principles formulated at the convention at which petitioner was present (R. 97).

Second, the very documents which most unequivocally advocated force and violence were those written and circulated during petitioner's membership in the Communist Party and related organizations prior to 1927, or very shortly thereafter. Thus "The State and the Revolution" (Ex. 8, pp. 14–16, R. 129) (*supra,* pp. 65–67) was published in 1924 (R. 128); "The Theory and Practice of Leninism" (Ex. 11, pp. 30–33, 64, R. 212) (*supra,* pp. 62, 65, 68) was published between 1924 and 1929 (R. 159); "Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26, pp. 15, 36, 47, R. 274, 835) (*supra,* pp. 63–64), adopted in 1920 by the Second Congress of the Communist International, was issued by the Workers' Party of America in 1923 (*id.,* foreword, inside front cover) and embodied the precepts of the Workers' (Communist) Party in 1925 (Ex. 12, pp. 137–138, R. 241); "Programme of the Young Com-

munist International" (Ex. 10, p. 43, R. 152) (*supra*, p. 64) was published in 1929 (*id.*, title page); and "Programme of the Communist International" (Ex. 6, p. 52, R. 109) (*supra*, pp. 67–68) was adopted in 1928 and published in 1929 (Ex. 6, p. 4, R. 109; see R. 833–834).[66] In addition, petitioner's connection with much of this contemporary literature was direct and not simply that of a passive or rank and file Party member. During their formulation, publication, and distribution, petitioner was an officer of the Party or related organizations (*supra*, pp. 4–5); many of these works were used as textbooks in classes of the Young Workers' League of which petitioner was educational director (R. 88–89; see also *infra*, Appendix C, pp. 145–151).

Third, petitioner's testimony was not without contradiction and unfounded explanations. For example, he testified at one time that the Party was,

[66] The general lack of contemporaneity of the documents upon which petitioner relied to establish the interpretation for which he contended is in marked contrast (see *supra*, p. 70). And it is to be noted that Professors Brown and Thompson, whose testimony in another proceeding was introduced by petitioner in this case, both confined themselves to the issue of the philosophy and theory of "true" Marxism and did not deal with the Communist Party's strategy or tactics (R. 561, 759–762, 784), nor had they read many of the communist documents relating to or issued during the relevant period (R. 555–560, 759, 761). Professor Thompson expressly qualified his statement by testifying that, "I do not presume to know or to say whether the Communist Party of the United States adheres to" the views of Marx, Lenin, and Engels on violence (R. 757; cf. R. 762, 784).

until 1938, without a constitution or program at all (R. 861); elsewhere, he testified that it was without a "written" constitution (R. 364–365); he testified that under communism all classes would disappear (R. 394), and, on the other hand, that the Party did not want to abolish all classes (R. 864–865); he testified that in a passage from "The Theory and Practice of Leninism" (Ex. 11, pp. 30–31, R. 212) the author contemplated application only to Russian conditions (R. 879), while the context of the passage (Ex. 11, pp. 27–36, R. 212) indicates that it was not so limited. And a reading of his testimony warrants the conclusion that he tended toward evasion (e. g., R. 868, 878–879, 880, 881–882).

In any event, the district court had an opportunity to observe his demeanor. In the light of all the circumstances, it was reasonable for the district court to disbelieve petitioner's testimony on the issue of his beliefs relating to the advocacy of force and violence and to conclude that he had in fact subscribed to the interpretation which he disavowed at the hearing, and which did embody advocacy of force and violence.

(c) In any event, even if petitioner did *subscribe* to the interpretation for which he contends, he nevertheless *taught* a different interpretation which embodied force and violence. Our contention relating to this branch of the issue is simply that whatever the "true" theoretical interpretation of communist principles on force and violence, pe-

titioner cannot escape responsibility for words whose ordinary import is the advocacy of force and violence.

In this view of the case, what petitioner thought the literature meant is immaterial. It is scarcely open to debate that the literature during the *relevant period can reasonably be construed* as inflammatory, and unmarked by any apparent distinction between advocating and predicting force and violence. The audience for whom the literature was intended was not one likely to make the logical and metaphysical distinctions here sought to be drawn. The audience was presented with such clauses as "smash" the State "by force" (Ex. 18, p. 32, R. 166); the victory of the proletariat "can only be decided by force of arms" (Ex. 26, p. 15, R. 274, 835); "the proletariat must resort to an armed uprising" (*id.* p. 36); "Arming of the proletariat to conquer, expropriate and disarm the bourgeoisie" (Ex. 10, p. 43, R. 152). The audience is urged to "revolution" and revolution is defined as—

> an act in which part of the population forces its will on the other parts by means of rifles, bayonets, cannon, * * * (Ex. 8, p. 44, R. 129).

Even were it assumed that these phrases are directed toward the defensive necessity of using force and violence, it is difficult to believe that those to whom the literature was directed would interpret the literature as anything but advocacy

of force and violence. Nowhere in the literature of the period in question is there advice to the contrary. Consequently, whatever petitioner's unexpressed mental reservations, it cannot be said that he *behaved* as a person attached to the Constitution or one well disposed to the good order and happiness of the United States.[47] Petitioner was an active participant in and leader of the Party; further, he participated in the formulation of some, and in the dissemination and use of much, of this literature. In these circumstances it must be concluded that his behavior fell short of the statutory standards.[48]

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[47] Compare *United States ex rel Abern* v. *Wallis*, 286 Fed. 413, 413–414 (S. D. N. Y.):

> * * * Since the party has seen fit to use words of general application, which in their popular and ordinary sense may fairly import, and which are appropriate to the use of, force and violence, and which have been found to have that meaning, there is no obligation upon the court to refine and construe the language so as to reach a different result. If force and violence be not within the contemplation of the party, it would be a simple matter to have the absence of such thought clearly appear. As it is, the language used would seem designed to mean all things to all men, and to be fairly susceptible of meaning, even though it does not unequivocally declare in favor of, force and violence. * * *

[48] It would seem plain that petitioner cannot disavow the natural import of the literature itself (see *supra*, pp. 61–68, *infra*, Appendix C), irrespective of his personal beliefs concerning its proper interpretation. Particularly is this so in the light of the fact that one of the very tests of conformance to communist principles was whether the indi-

(d) Independently of the three separate contentions we have advanced relating to the issue of force and violence, it is our position that, even if we accept petitioner's evidence that, during the period in question, the literature was properly to be interpreted in the manner for which he contends and that, further, this interpretation represented his personal views, such interpretation itself constituted the advocacy of force and violence.

Broadly stated, the view to which petitioner testified he subscribed is that force is not advocated, *i. e.*, desired, but simply recognized as inevitable (*supra*, p. 70). But analysis of this view, as expressed by petitioner himself and by Professors Brown and Thompson, when read in the light of other evidence, warrants the conclusion that it also constitutes, although perhaps in somewhat less direct terms, the advocacy of, belief in, and teaching of force and violence. The difference, in brief, between the interpretation for which the Government contends and that to which petitioner insists he adhered, is one of phraseology, not of substance.

The views which petitioner advanced in respect of force and violence were not simply abstract and purely philosophical. While the origin of the views may lie in the philosophy of economic or dia-

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vidual believed force and violence were to be used. It was for persons who, while in general advocating communistic ends, nevertheless omit emphasis of the element of force and violence, that the Party reserved some of its most severe official condemnation (*supra*, pp. 66–67).

lectic materialism, that philosophy was shortly translated by Marx and Engels into a program of political action (see Appendix B, *infra,* p. 134). Similarly, the Communist Party and related organizations were unquestionably not groups devoted to historical and philosophical contemplation, but rather, as is apparent from their slogans, political activities, resolutions, and platforms, were organizations looking toward and advocating specific action.

It is for this reason that the contention that the Communists no more advocate force and violence than they advocate the rising of the tide (*supra,* p. 71, n. 54) is misconceived. The essential distinction is between the necessary *passivity* of man to the rising tide, and the vital *activity* expected and proposed by the Communist Party. The tide rises willy-nilly; the Communists, on the other hand, were actively to *create,* and to advocate the creation of, the situation which was to give rise to their own use of force and violence, whether defensive or initial. In short, the communist principle adopted the familiar strategy that offense is the best defense.

For it was stated that the revolution would not occur through the forces of uncontrollable and inevitable economic evolution; ideologies must also play an active role (R. 679). It was in the realm of ideologies which stimulate the revolution that the communist program was to become effective; the Communists' program was to lay the founda-

tion and create the situation for revolution. To this end, they were obliged to engage in revolutionary activities of all kinds, preferably mass action.[69] To attract the worker to the revolutionary standard, "transitional slogans and partial demands corresponding to the concrete situation" were to be advanced by the Party but these "must be bent to revolutionary aim of capturing power and of overthrowing capitalist society" (Ex. 6, p. 79, R. 109). For—

> The task of the Party is to utilize these minor every-day needs as a *starting point* from which to lead the working class to the *revolutionary struggle for power* (*Ibid.*).

Everything which could be done to create the revolutionary situation was to be done; the Communists' duty "consists in accelerating the revolution, without provoking it artificially until sufficient preparation has been made" (Ex. 26, p. 13, R. 274, 835; see also Ex. 10, p. 44, R. 152; Ex. 9, pp. 73–74, R. 144; Ex. 11, p. 25, R. 212; Ex. 18, pp. 58–59, R. 166). Simple reform, however, was insufficient and secondary; the reform only "tends inevitably to consolidate the powers that be, and weaken the revolution" and accordingly, "the main thing is the revolutionary work and not the reform" (Ex. 11, p. 64, R. 212). Thus, too, the purpose of the

[69] Ex. 13, pp. 7, 15–26, 55, 105, R. 248; Ex. 26, pp. 18, 47–48, 52, R. 274, 835; Ex. 14, pp. 7–8, 11, 31, R. 255; Ex. 10, pp. 43–44, R. 152; Ex. 12, pp. 9–10, 13–14, 79, 93–95, 106, 147, R. 241; Ex. 18, pp. 43, 50–51, 58–59, R. 166; Ex. 15, pp. 2, 39–40, 62–64, R. 264; Ex. 27, p. 7, R. 276; Ex. 8, p. 32, R. 129; Ex. 6, pp. 65, 75, R. 109; Ex. 11, p. 55, R. 212.

Communist Party in respect of legislation was not constructive; rather the Communists—

> go to the law-making institutions, not to tinker them up for the benefit of the capitalists, but to be a monkey wrench in their machinery, preventing it from working smoothly on behalf of the masters (Ex. 18, p. 66, R. 166).[70]

Democratic elections were to be used "not in the sense of obtaining a maximum of votes, but in that of a revolutionary mobilization of the masses around the mottoes of the proletarian revolution" (Ex. 26, p. 48, R. 274, 835).[71] Ultimately, through these activities, when the nation is in the throes of an economic crisis or a war, the situation is "ripe."[72] This is the critical moment when the culminating point in the development of the revolutionary situation is reached and—

> To allow that opportunity to slip by and to fail to start rebellion at that point, means to allow the initiative to pass to the enemy and to doom the revolution to defeat (Ex. 6, p. 80, R. 109).[73]

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[70] To the same effect, see also Ex. 26, pp. 45, 52, R. 274, 835; Ex. 8, p. 32, R. 129.

[71] See also Ex. 27, p. 7, R. 276; Ex. 13, p. 55, R. 248; Ex. 15, pp. 39–40, R. 264; Ex. 14, p. 11, R. 255.

[72] Ex. 10, pp. 44–45, R. 152; Ex. 9, pp. 65, 73–74, R. 144; Ex. 11, p. 25, R. 212; Ex. 18, pp. 58–59, R. 166; Ex. 14, pp. 35–36, R. 255; Ex. 6, pp. 79–80, R. 109.

[73] See also Ex. 26, pp. 33, 47, R. 274, 835; Ex. 10, pp. 44–46, R. 152; Ex. 7, pp. 20–21, R. 124; Ex. M, pp. 25, 29, R. 465; Ex. 11, pp. 12, 25, R. 212; Ex. 6, pp. 14–15, 47, 53, R. 109; Ex. 9, pp. 73–74, R. 144; Ex. 18, pp. 58–61, R. 166; Ex. 14, pp. 18, 35–36, R. 255.

The result was to be chaotic upheaval; the existing government's efforts to put down the uprising constituted the use of force and violence to combat which the Communists then had also to use the force and violence which had been predicted.[74]

Moreover, petitioner expressly espoused the view and belief that a majority [75] had the "right" to take "things into their own hands" (R. 876–877) and to resort to force and violence and to revolution to attain their objective of political power if not successful through peaceable means (R. 374, 375, 867, 869, 885–886), and stated that he considered he had a constitutional right to enunciate these general principles on the right of revolution (R. 373).

This course of events thus embodied in the interpretation to which petitioner testified he subscribed is, we submit, more than resigned acceptance to the coming in of the tide. It is, indeed, initiation, not mere prediction, of fundamental economic, political and social changes.

[74] See Ex. 6, pp. 14–15, 27, 32, 54, 83, R. 109; Ex. 11, p. 25, R. 212; Ex. 16, pp. 107–108, R. 187; Ex. 18, p. 43, R. 255; Ex. 10, pp. 45–46, R. 152; Ex. L, pp. 16–17, R. 464; Ex. 26, p. 40, R. 274, 835.

[75] Petitioner used "majority" to refer to the "dominated class," and "minority" to refer to the "dominant" or ruling class or group (R. 373–375, 389–390, 868, 869, 876, 877, 897). This usage follows communist parlance: They did not speak of a legally expressed majority, and admitted they would not have a majority, even of the workers and agrarians, in their ranks until after they had seized political power (Ex. 13, pp. 4–5, R. 249; Ex. 26, pp. 33–34, 36, 44, 45, 52, R. 274, 835).

and belief in, not mere prediction of, the use of force and violence as the climax of such change. Since it is advocacy of constant effort toward creation of the situation, of deliberate precipitation of the State's "initial use for force," of development to civil war, the conclusion follows that it is advocacy and belief in the overthrow of the Government by force and violence."[76]

3. *The decree must be affirmed since the evidence establishes that petitioner was not attached to the principles of the Constitution.*

(a) The evidence in the record establishes that the Communist Party believed in, advocated, and taught political principles fundamentally at variance with the principles of the Constitution.

American democracy, deriving from the Constitution—

> is a fraud. Such formal democracy as is written into the Constitution and the laws of the country is camouflage to hide the real character of the dictatorship of the capitalists."[77]

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[76] Particularly is the conclusion justified in the light of the further communist precept (*supra*, pp. 71–72) that in any event the mere existence of the State presupposes the current use by it of force and violence against the "dominated class," and that therefore, since force and violence has already been initiated by the "dominating class" in its enforcement of the law, resistance to such enforcement (counter force) is justified.

[77] Constitution of the Workers Party of America (1921–1924), Ex. 27, p. 7, R. 276. See also Ex. 15, p. 36, R. 264;

Accordingly, the Party advocated the adoption of a wholly new political system. Existing constitutional concepts were to be abandoned: There was to be "immediate and unconditional confiscation of the estates of the landowners and big landlords,"[78] but "No propaganda can be admitted in the ranks of the Communist parties in favor of an indemnity to be paid to the owners of large estates for their expropriation" (Ex. 26, p. 82, R. 274, 835).[78] In the interim government to be established by the Communists, the traditional freedoms guaranteed by the Bill of Rights were to be ended:

> * * * there can be no talk of "freedom" for everybody. The dictatorship of the proletariat is incompatible with the freedom of the bourgeoisie. The dictatorship is, in fact, necessary to deprive the bourgeoisie of their freedom, to chain them hand and foot in order to make it absolutely impossible for them to fight the revolutionary proletariat.[79]

Ex. 6, pp. 33, 35, 38–41, R. 109; Ex. 18, pp. 18, 63–64, R. 166. The constitutional system of checks and balances, of election of Senators, or the Senate's power to pass on legislation, and of procedure for amending the Constitution were criticized as designed to frustrate the will of the majority (Ex. 27, p. 6, R. 276). The Constitution was said to have been framed by "the merchants, the bankers and landowners of 1787" and it protected only "the coal barons, railroad kings, and the industrial and financial lords" (*ibid;* Ex. 15, p. 36, R. 264).

[78] See also Ex. 6, pp. 38–39, 41, R. 109; Ex. 8, p. 41, R. 129. "Modern bourgeois private property" was to be abolished under Communism. Ex. 7, pp. 23, 25, R. 124.

[79] "A B C of Communism," Ex. 16, pp. 65–66, R. 187. See also Ex. 8, pp. 63–64, R. 129; Ex. 26, p. 11, R. 274, 835.

Accordingly, "class enemies" of the proletariat were to be deprived of their political rights (Ex. 6, p. 35, R. 109); the new State cannot include "representatives of the former ruling classes" (Ex. 26, p. 46, R. 274, 835). Freedom of assembly was to be reserved exclusively for "the toilers" (Ex. 11, p. 31, R. 212).

While available democratic procedures of elections were to be used by the Communists, the use was to be confined not to constructive improvement within the existing framework; rather the communist candidate's task was "to expose the fraudulent character of capitalist democracy and to carry on the propaganda for the soviets" (Ex. 13, p. 80, R. 248).[80] And if elected to public office, the Communist was directed, in an official work issued in 1923 and constituting the precepts of the Party in 1925, to "facilitate the task of destruction" of the existing "apparatus" (Ex. 26, pp. 44–45, R. 274, 835), since the "bourgeois State organizations" were to be utilized only "with the object of destroying them" (*id.*, p. 46).

The destructive aim of the communist candidate reflected the Party's destructive objective. The existing democratic framework was said to be not one which could be evolved and perfected; it had to be wholly destroyed. The workers could not utilize "the form of organization of the existing government, constitutional basis, its law, the bureaucracy

[80] "The Second Year of the Workers Party of America" (1924).

which has been built up over a century" (Ex. 27, p. 9, R. 276). Rather, the aims of the Communists could be achieved only by "the annihilation of the entire bourgeois governmental apparatus, parliamentary, judicial, military, bureaucratic, municipal, etc.," and it was necessary for the Communist to "break and destroy" the "apparatus" (Ex. 26, pp. 11, 44–45, R. 274, 835).[81] And the annihilation of the existing political structure was said to be equally as necessary in the United States as elsewhere (Ex. 8, pp. 22, 26, R. 129), for democracy, it was said, too, was to be destroyed (*id.*, p. 59).

In the place of the existing government destroyed by them the Communists were to build a new state, a new government (Ex. 14, p. 12, R. 255) which was to be "not a change of ministry, but a new State, with central and local organs, the State of the proletariat which rises on the ruins of the old State of the bourgeoisie" (Ex. 11, p. 30, R. 212).[82] "Territorial congressional districts" were to be replaced by "councils of the workers" which unite legislative and executive power (Ex. 15, p. 37, R. 264; see also Ex. 26, p. 46, R. 274, 835; Ex. 18, pp. 50–51, R. 166). The Senate, the Supreme Court, and the veto power of the President were to be abolished (Ex. 15, p. 38, R. 264). In their stead was to be a "dictatorship of the

[81] See also Ex. 15, p. 37, R. 264; Ex. 11, pp. 30–33, R. 212; Ex. 8, p. 22, R. 129.

[82] See also Ex. 14, pp. 11–12, R. 255; Ex. 11, p. 33, R. 212; Ex. 8, pp. 25, 26, R. 129.

proletariat" (Ex. 6, p. 32, R. 109).[83] The Soviets, which were to rule the government, were to be selected only by workers and farmers, and ultimately controlled by the Communist Party; the party control of the Soviets, through its organizational structure, which was to lead directly from local units to a world congress, an executive committee, a subcommittee (Presidium), and a Political Secretariat, was to vest in a single individual.[84]

In short, according to the "Communist Manifesto," "The Communists everywhere support every revolutionary movement against the existing * * * order of things" (Ex. 7, p. 44, R. 124). And this included the United States, for the purposes of the Communist Party and its members were, in sum,

> purposes utterly antagonistic to the purposes for which the American democracy, so-called, was formed.[85]

In his testimony and other evidence, petitioner did not advert to most of the evidence concerning the aims of the Communist Party and its views in respect of the existing form of government. He cited the provisions of the 1938 constitution of the

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[83] See also Ex. 6, pp. 7, 34, 35, R. 109; Ex. 26, pp. 64–65, R. 274, 835; Ex. 12, p. 113, R. 241; Ex. 8, pp. 18–19, 61, R. 129.

[84] See Ex. 26, pp. 5–8, 37–39, R. 274, 835; Ex. 6, pp. 85, 86–93, R. 109; Ex. 11, pp. 67–68, 72–73, R. 212; Ex. 14, pp. 31, 40, R. 255; Ex. 27, p. 10, R. 276.

[85] Ex. 14, p. 7, R. 255 ("Acceptance Speeches").

Communist Party, the equivocal preamble of which states that the Party is devoted to

> carrying forward today the traditions of Jefferson, Paine, Jackson, and Lincoln, and of the Declaration of Independence; it upholds the achievements of democracy, the right of "life, liberty, and the pursuit of happiness" and defends the United States constitution against reactionary enemies who would destroy democracy and all popular liberties; * * * (R. 365–366).[86]

Petitioner further testified to his belief that advocacy of revolution was consistent with the writings and speeches of Jefferson and Lincoln (R. 373, 396–397). The "democratic structure" is to be preserved and utilized "as far as possible for the advantage of the working classes" (R. 693; cf. R. 420, 549). "Nationalization" of property may possibly take place "with compensation" (R. 872–874, 878, 895, 896). In general, petitioner testified that at the time he was admitted to citizenship and for five years preceding as well as at all times subse-

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[86] Article VI of the 1938 constitution (Ex. 5, R. 84) provided:

> Rights and Duties of Members
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> SECTION 1. The Communist Party of the U. S. A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy whereby the majority of the American people have obtained power to determine their own destiny in any degree (R. 367).

quent, he was "fully attached" both to the "spirit and letter" of the Constitution and laws of the United States, as he understood them (R. 896). But he also testified that at the time of his naturalization, he advocated socialism, as expressed in the writings of Marx, Engels, and Lenin, and as stated in the Programme of the Communist International,[87] for the United States (R. 862, 898), and that socialism was to develop into a communistic society (R. 862, 863). He used and taught from the relevant literature and he had "done all I could to educate the people in the principles of socialism" (R. 865). He testified that the "dictatorship of the proletariat" as used in the communist literature meant "not a form of government, but a state of things" and meant only that the majority by the people shall in fact direct their own destinies and shall control the agencies of government (R. 376, 377, 394, 395, 863, 864).

It will thus be seen that there is no conflict concerning most of the evidence establishing the communist views toward the existing Constitution and political structure of the United States. Petitioner did not repudiate or deny the bulk of the evidence but tentatively modified only the evidence on expropriation of private property without compensation. For the rest, he relied upon the broad principles of the 1938 communist constitution and the broad statement of "attachment to the spirit and letter of the Constitution," without reference,

[87] Ex. 6, R. 109.

however, to the particular substantive principles embodied in it. He admittedly adhered to the general political or theoretical principles of Communism, and he participated actively to achieve the realization of those principles.

The evidence as a whole, therefore, clearly supports the concurrent findings of the courts below (R. 49, 916–917) that petitioner was not attached to the principles of our government as embodied in the Constitution but, on the contrary, advocated, believed in, and taught principles fundamentally at variance with its spirit and text. Other courts on similar evidence have reached a like result in respect of the ends and objectives of the Communist Party and its members. *United States* v. *Tapolcsanyi,* 40 F. (2d) 255, 257 (C. C. A. 3); cf. *In re Van Laeken,* 22 F. Supp. 145, 14[illegible]–147 (N. D. Cal.); *In re Saralieff,* 59 F. (2d) 436 (E. D. Mo.); *Ex parte Sauer,* 81 Fed. 355, 356 (Tex.) (socialism); *United States* v. *Olsson,* 196 Fed. 562, 564–565 (W. D. Wash.), reversed without opinion and remanded for new trial pursuant to stipulation of counsel, 201 Fed. 1022 (C. C. A. 9) (socialism).

(b) On the basis of this evidence, especially where coupled with the evidence, elsewhere discussed, concerning petitioner's lack of true faith and allegiance to the United States (Point IA, pp. 29–52), concerning his advocacy of general resort to violation of the laws (Point IB1, pp. 54–59), concerning his advocacy of the overthrow of

this Government by force and violence (Point IB2, pp. 61–70), and concerning his disbelief in organized government (Point IC, pp. 110–114), the district court properly ordered the cancellation of petitioner's citizenship on the ground of lack of attachment to the principles of the Constitution.

The Naturalization Act provided in 1927 that an alien seeking citizenship must, for the five years preceding his naturalization, have "behaved as a man * * * attached to the principles of the Constitution of the United States, * * *" (8 U. S. C. 382). But mere behavior is insufficient; it is settled that the alien must not only behave as a man attached to the principles of the Constitution but must also have been *in fact* so attached. *United States* v. *Macintosh,* 283 U. S. 605, 616.[88] Consequently, the alien's beliefs and views as well as his conduct during the five-year period prescribed, became relevant. *United States* v. *Schwimmer,* 279 U. S. 644, 650–651.

The statutory requirement of attachment is not fulfilled if the political and social principles

[88] The word "behaved" was omitted by the Nationality Code, Act of October 14, 1940, c. 876, Title I, sec. 307, 54 Stat. 1142, 8 U. S. C. 707 (a), and the alien was expressly required to be *in fact* attached to the Constitution. But it does not appear that the Code intended thereby to change the existing law, since it was essentially a codification and clarification. See *supra*, p. 82, n. 64. Further, it appears plain that the specific change, omitting the reference to behavior contemplated no change in the statutory requirements. See Report of the President's Commission Proposing a Revision and Codification of the Nationality Laws of the United States, 76th Cong., 1st Sess., Part I (1939), p. 23.

adopted by an alien are, in their substance, wholly inconsistent with or outside the framework of the existing government and the basic principles of the Constitution. Attachment to the principles of the Constitution requires belief in and sincere adherence to its general political philosophy. The lower courts have uniformly so held. *In re Van Laeken*, 22 F. Supp. 145, 147 (N. D. Cal.); *In re Shanin*, 278 Fed. 739, 740 (Mass.); *In re Saralieff*, 59 F. (2d) 436 (E. D. Mo.); *In re Beale*, 2 F. Supp. 899, 901 (Minn.), affirmed, 71 F. (2d) 737 (C. C. A. 8).[89]

Petitioner, however, contends (Br. 25–27) that under the Naturalization Act, belief in or advocacy of changes in the Constitution, regardless of the scope, are immaterial so long as the change is sought by peaceful means. We believe that this view fails to give import to the text of the statute or to its legislative history.

While the right of both citizens and aliens to advocate changes in our Constitution and society by

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[89] But see *United States* v. *Rovin*, 12 F. (2d) 942 (E. D. Mich.); 18 Cornell L. Q. 251; 46 Harv. L. Rev. 325. And compare the statement of Holmes, J., dissenting in the *Schwimmer* case, *supra*, at p. 654:

> Surely it cannot show lack of attachment to the principles of the Constitution that she [the alien] thinks that it can be improved. * * * Her particular improvement looking to the abolition of war seems to me not materially different in its bearing on this case from a wish to establish cabinet government as in England, or a single house, or one term of seven years for the President. * * *

the prescribed methods is of course not disputed, it cannot be supposed that an alien can be deemed to be *attached* to the principles of the Constitution when his attachment, and that highly qualified,[90] is confined to Article V. This does not constitute a general attachment to the spirit and substance of the Constitution. The Constitution stands for more than an instrument whereby peaceful change may be accomplished. We do not contend, of course, that, to achieve citizenship, an alien must insist on the maintenance of the *status quo* or believe that improvement is impossible. He may think that the laws and the Constitution should be amended in some or many respects. But Congress, when it required that an alien must be attached to the principles of the Constitution, can scarcely be supposed to have made available the high privilege of citizenship to an alien whose political beliefs are wholly destructive of and at variance with the existing structure or

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[90] The Communists were severely critical even of the *procedure* prescribed by Article V. The Program and Constitution of the Workers Party based its conclusion that "American democracy is a fraud" in part on the provision of Article V, the result of which was said to be that "A majority of the people of the United States cannot change the Constitution. The vote of two-thirds of the members of the legislators [*sic*] of three-fourths of the states is required to pass a constitutional amendment. One-fourth of the states, in which there may live only one-fortieth of the population can prevent any change of the fundamental law of the land" (Ex. 27, p. 6, R. 276). The same view was repeated in "The Platform of the Class Struggle" (Ex. 15, p. 34, R. 264).

with the fundamental concept held by the forefathers with respect to government, the rights of the individual, the minority, and the majority. The test is not whether an alien, rightly or wrongly, believes in evolved changes looking toward a better society; it is whether he substitutes revolution for evolution, destruction for construction, whether he believes in an ordered society, a government of laws, under which the powers of government are granted by the people but under a grant which itself preserves to the individual and to minorities certain rights or freedoms which even the majority may not take away; whether, in sum, the events which began at least no further back than the Declaration of Independence, followed by the Revolutionary War and the adoption of the Constitution, establish principles with respect to government, the individual, the minority and the majority, ~~replace ordered liberty~~ by which ordered liberty is replaced by disorganized liberty."[91] And since the evidence shows that petitioner's political philosophy included "annihilation" of the existing State, destruction of the "social

[91] Even belief in these basic principles may not fulfill the requirements of "attachment" within the meaning of the Naturalization Act. Other basic principles—that the form of government be representative, for example, which, again, the Communists did not accept (supra, pp. 95, 97)—may also be embodied in "attachment." But the criteria set out in the text plainly mark at least a *minimum* which an alien must accept to qualify as attached to the principles of the Constitution.

and political order of things," disbelief in what we conceive to be democracy, and abolition of elements universally regarded as integral to a democratic state, he has failed to meet the test.

The history of the Naturalization Act supports the view that objectives, no less than means, were intended as a qualification for citizenship, and that Congress intended to withhold citizenship from those aliens whose political beliefs were basically at variance with principles embodied in the existing system of government.

The Act of March 26, 1790,[92] the first Naturalization Act, required an oath to support the Constitution, and a two-year residence in the United States. The latter requirement was imposed in order, first, that the alien—

> have an opportunity of knowing the circumstances of our Government, and in consequence thereof, shall have admitted the truth of the principles we hold. Second, that he shall have acquired a taste for this kind of Government.[93]

The "principles we hold" are not wholly empty of content. The communism of 1927 was irreconcilable with them (Ex. 26, p. 64, R. 274, 835; Ex. 6, p. 35, R. 109; Ex. 15, pp. 11, 58–59, R. 264; Ex. 11, pp. 33, 34, R. 212; Ex. L, pp. 20–21, R. 464; Ex. D, p. 13, R. 438).

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[92] C. 3, 1 Stat. 103.

[93] Michael J. Stone, 1 Debates in Cong. (Old Series) 1789–1790, p. 1157; see also *id.*, pp. 1147–1148, 1150, 1155–1156.

The intent of Congress to create standards of substantive attachment to the existing political structure was again evidenced with the passage of the Naturalization Act of 1795,[94] which for the first time imposed the requirement that the alien shall have "behaved as a man * * *, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same." The Act, the debates show, was passed in a background of turmoil in Europe, marked by overthrow and expulsion of established governments, and creating the fear that emigrant refugees would hold principles not consonant with our ideals.[95] Accordingly, it was

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[94] C. 20, 1 Stat. 414.

[95] In supporting the bill, Theodore Sedgwick stated (4 Annals of Cong., 3rd Cong., 1793–1795, p. 1008):

> The present (Mr. S. said) he believed the most inauspicious time for the indiscriminate admission of aliens to the rights of citizenship. A war, the most cruel and dreadful which had been known for centuries, was now raging in all those countries from which emigrants were to be expected. The most fierce and unrelenting passions were engaged in a conflict, which shook to their foundations all the ancient political structures in Europe. This contest was supported on the one hand by men who believed personal political distinctions were necessary to the great purpose of security, and on the other by those who thought that society could be protected and individuals secured by a Government with departments, and without checks; neither embracing the principles established here, where, without privileged orders distinct portions of power were to be deposited in different hands, in such manner that it was almost impossible for the mind even to conceive that the different

proposed that an alien be required to be "attached to a Republican form of Government" in order "to prevent those poisonous communications, of which gentlemen were so much afraid." 4 Annals of Cong., 3rd Cong., 1793–1795, p. 1021. The proposal was amended to substitute "attached to the Constitution of the United States" since the term "Republican" was equivocal and a title "assumed by many Governments in Europe, which were upon principles entirely different from ours." Some which were said to have assumed the title of "Republican" had been "Aristocracies of the most hideous form," while "Many call themselves Republican, who, by this word, mean, pulling down every establishment; they were mere Anarchists."[96]

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departments should form an union for any mischievous purpose; and altogether impossible to believe that without such concurrence either alone should be capable of executing any wicked design.

Could (he asked) any reasonable man believe, that men who, actuated by such passions, had fought on grounds so opposite, almost equally distant from the happy mean we had chosen, would here mingle in social affections with each other, or with us? That their passions and prejudices would subside as soon as they should set foot in America? or, that, possessing those passions and prejudices, they were qualified to make or to be made the governors of Americans?

[96] James Madison objected to the amendment since "It was hard to make a man swear that he preferred the Constitution of the United States, or to give any general opinion, because he may, in his own private judgment, think Monarchy or Aristocracy better, and yet be honestly determined to support this Government as he finds it." 4 Annals of Cong., 3rd Cong., 1793–1795, pp. 1022–1023. When Congress

Id., pp. 1021–1022. One of the very groups designed to be excluded from naturalization was, in fact, the Jacobins,[97] whose views were "abhorrent to the Constitution" and who were "dangerous to the country" (*id.*, pp. 1031–1032).

In sum, it is clear that from the inception of the naturalization law, Congress intended that "attachment to the Constitution" contemplated not only adherence to its procedure but also subscription to the general existing form of government embodied in the Constitution.[98] Since the

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adopted the amendment over Madison's objections it rejected mere determination to "support this Government as he finds it" while reserving "private judgment" that some other system is better.

[97] For the parallel between Communists and Jacobins, see Brinton, *The Jacobins* (1930). In his Manifesto of the Communist Party (Ex. 7, p. 39, R. 123), Marx approved of the revolutionary ideology of Babeuf, the leader of the counter-revolutionary faction composed principally of Jacobins. Babeuf's philosophy contemplated the abolition of private property and the communisation of all land and products of industry. See Bax, *The Last Episode of the French Revolution* (1911); Birley, *Tre English Jacobins* (1924); cf. "A B C of Communism," Ex. 16, preface, p. 2, R. 187

[98] The contemporary legislative conception of the qualifications for citizenship under the attachment provision parallels the conception of the legislators who passed the earliest acts. See H. Rep. No. 1941, 75th Cong., 3d Sess. (1938) which recommended the enactment of H. R. 9690, 75th Cong., 3d Sess., disqualifying from naturalization any person who "believes in any form of government for the United States contrary to that now existing in the United States or who is a member of or affiliated with any organization which advocates any form of government for the United States contrary to that now existing in the United States." While

evidence shows that petitioner at most accepted the form, but did not believe in the substance of the Constitution, his citizenship was validly cancelled.

C. THE FINDING THAT PETITIONER DISBELIEVED IN, OR WAS A MEMBER OF AN ORGANIZATION DISBELIEVING IN, ORGANIZED GOVERNMENT IS SUSTAINED BY THE EVIDENCE, AND THE DECREE MUST THEREFORE BE AFFIRMED

Petitioner in his petition of naturalization stated that he was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization teaching disbelief in or opposed to organized government (R. 75). The district court found this statement to have been untrue

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no further action was taken on the proposed legislation, the Committee Report expressly stated (p. 2) that "This bill does not in any manner change any of the provisions of existent law[;] it merely adds the additional language calling especial attention to the necessity of inquiring as to the applicant's membership in organizations" advocating a change in the form of government.

With this report should be compared H. Rep. No. 1353, 72d Cong., 1st Sess. (1932), recommending the enactment of H. R. 12044 to amend the Immigration Acts by providing for the exclusion of aliens who advocate the overthrow of the Government *by force and violence*. The bill proposed to define a "Communist" as one who advocates force and violence (see *infra*, p. 123, n. 107). The Committee on Immigration and Naturalization stated in its report (p. 2) that the definition would exempt any alien who "although subscribing to the doctrine of a system of common ownership of property and the abolition of private property or the common ownership of the means of production, does not believe in, advise, or advocate the establishment of this system by force or violence." To omit the requirement that the element of force and violence be present, the Report stated (p. 3), "would do great violence to the eternal principles of American liberty." See also H. Rep. No. 1023, Pt. 1, 74th

(R. 48–49), that in fact the Communist Party taught disbelief in and opposition to organized government, and that petitioner subscribed to these principles (R. 49). Since the Naturalization Act (34 Stat. 598, 8 U. S. C. 364; see Appendix A, *infra*, pp. 129–130) expressly disqualified from citizenship any alien who disbelieved in, or was a member of any organization which disbelieved in, organized government, the decree cancelling petitioner's certificate must be affirmed if the district court's findings in this respect are not clearly erroneous. We submit that they are correct.

Cong., 1st Sess. (1935) on H. R. 7120, p. 3; S. Rep. No. 808, 72d Cong., 1st Sess. (1932) on H. R. 12044, pp. 2–3.

These statements do not, however, require the conclusion that the Committee did not intend to deny *citizenship* to aliens advocating fundamental changes in the form and principles of our government. The bills there under consideration related only to admission and deportation. We discuss the distinction between such provisions and naturalization below (pp. 123–125). Here it may be noted, however, that the legislative history of the earliest Naturalization Acts discloses that one of the very reasons for the requirement that the alien reside in the United States for a specified period was in order that he "have an opportunity of knowing the circumstances of our Government" and "shall have acquired a taste for this kind of Government" (*supra*, p. 106). By rejecting as a standard of admission or continued residence an alien's substantive political principles as distinguished from his beliefs relating to the means by which he advocates the realization of those principles, Congress would simply be following the earliest legislative desire to provide the alien with the opportunity for "acquiring a taste for this kind of Government." It would be entirely consistent, therefore, for Congress on the one hand to permit an alien to enter and reside, and, on the other hand, to deny him citizenship if its hopes that his beliefs will be acclimated are not realized.

A basic tenet of Communism is, as we have noted (*supra,* pp. 71–72), that any State is simply an "organ" or "embodiment" of class domination;[99] the transitional government of the dictatorship of the proletariat which Communism would impose is itself a "domination of the proletariat over the bourgeoisie * * * " (Ex. 11, p. 31, R. 212; see also Ex. 16, p. 60, R. 187). Accordingly Communism does not recognize "any form of State authority" (Ex. 26, p. 45, R. 274, 835). Since the State is, thus, evil and undesirable as an instrument of oppression, it must ultimately disappear and

> Society will banish the whole State machine to a place which will then be the most proper one for it—to the museum of antiquities side by side with the spinning-wheel and the bronze axe.[100]

The disappearance of the State, however, is not immediate; it occurs as a "withering away" only after the "transitional form" of a proletarian dictatorship (Ex. 8, pp. 13, 42–43, 64, 69, R. 129; see Ex. 16, p. 135, R. 187). Thus, according to the

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[99] "* * * According to Marx, the State is the organ of class *domination*, the organ of oppression of one class by another. Its aim is the creation of order which legalizes and perpetuates this oppression by moderating the collisions between the classes" ("The State and Revolution," Ex. 8, p. 5, R. 129). See also *id.*, p. 64; Ex. 6, p. 29, R. 109.

[100] This passage from Engels is quoted in "The State and Revolution," Ex. 8, p. 11, R. 129. See also Ex. 6, p. 29, R. 109; Ex. 10, p. 30, R. 152; Ex. 16, p. 60, R. 187.

communist literature, the Anarchists and the Communists differed only in respect of the method by which government was to be abolished.

> He [Marx] protested not against the [Anarchist] theory of the disappearance of the State when classes disappear, or o[f] its abolition when classes have been abolished, but only against the proposition that the workers should deny themselves [to] the use of arms, the use of organized force, that is, *the use of the State*, for the purpose of breaking the resistance of the capitalist class. Marx purposely emphasizes, in order that the true sense of his contentions against the Anarchists might not be perverted, "the revolutionary *and transitional form*" of the State necessary for the proletariat. The proletariat only needs the State *temporarily*. We do not at all disagree with the Anarchists on the question of the abolition of the State as a *final aim* ("The State and Revolution," Ex. 8, p. 43, R. 129).[101]

And with the ultimate disappearance of the State, there will be no government: there will be left only "The principal work of administering" which "will be done in various counting-houses and statistical bureaus" ("A B C of Communism," Ex. 16, p. 59, R. 187; see also Ex. 8, p. 56, R. 129).

Except for his general assertion that he had truthfully stated that he was not an Anarchist and that he did not believe that the Communist Party

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[101] See to the same effect *id.*, pp. 64, 69, 82: Ex. 27, p. 10, R. 276; Ex. 10, p. 30, R. 152.

was an organization opposed to organized government (R. 362–363), petitioner did not advert in his testimony to the views embodied in the literature summarized above. Petitioner's own testimony,[102] as well as other evidence which he introduced (R. 743–744), however, coincided with such literature, and included the belief in the ultimate abolition of the State.

We submit that the evidence supports the conclusion that both petitioner and the Communist Party disbelieved in organized government. While for present purposes we may assume that the objective of the ultimate abolition of the State was to be achieved by peaceful evolution (but see *supra*, pp. 61–68) following the period of transition, it has been held that the statutory language was intended to embrace both philosophical disbelievers in organized government and violent "Anarchists." *United States* v. *Stuppiello*, 260 Fed. 483 (W. D., N. Y.); cf. *Lopez* v. *Howe*, 259 Fed. 401, 404–405 (C. C. A. 2), appeal dismissed and certiorari denied, 254 U. S. 613, 650; *United States ex rel. Georgian* v. *Uhl*, 271 Fed. 676, 677 (C. C. A. 2), cer-

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[102] Petitioner, in his own testimony, incorporated a statement by Earl Browder which petitioner said "sums up in clearest form" the communist views regarding democracy and socialism (R. 381). The Browder statement said (R. 389): "* * * all government—a necessary evil at best—must be directed toward creating a classless society, where exploitation of man by man has been entirely abolished, and where therefore, government, the state power, will ultimately become unnecessary, and will wither away and disappear."

tiorari denied, 256 U. S. 701; *Ex parte Pettine*, 259 Fed. 733, 734–735 (Mass.). Nor does it appear that the statutory language is inapplicable in the instant case because the abolition of the State was of necessity only an ultimate and remote goal: The provisions of the Act contain no restrictive language with reference to the imminence of the disappearance of the State; indeed they would have scant applicability if confined in operation to persons or organizations believing in or teaching the immediate abolition of all organized government. The theory of the statute seems to be that aliens who disbelieve in organized government, or who are members of an organization disbelieving in organized government, are no less objectionable if they envisage the accomplishment of their objective at an opportune future time than if they believe in it as an immediate endeavor. The statutory terms "disbelief" and "opposition," indeed, seem deliberately designed to embrace attitudes without reference to immediacy of realization.[103]

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[103] The courts have not interpreted the statute as requiring immediacy. See *United States* v. *Stuppiello*, *Lopez* v. *Howe*, *United States ex rel. Georgian* v. *Uhl*, *Ex parte Pettine*, *supra*. In *Turner* v. *Williams*, 194 U. S. 279, there was involved the constitutionality of a provision of the Immigration Act of 1903 for the deportation of "anarchists." The argument was made that the act was inapplicable to anarchists who "are merely political philosophers, whose teachings are beneficial rather than otherwise" (p. 292). This Court, however, said that the Act could constitutionally be applied to "aliens whose anarchistic views are professed as those of political philosophers innocent of evil intent" (p. 294).

II

NEITHER THE NATURALIZATION ACT NOR THE CONSTITUTION BARS CANCELLATION OF PETITIONER'S CERTIFICATE OF CITIZENSHIP

We have urged that the district court was correct in finding that petitioner was not, and had not behaved as, a person attached to the Constitution and well disposed to the good order and happiness of the United States, that petitioner's oath of allegiance was false, and that petitioner and the organizations of which he was a member disbelieved in and were opposed to organized government. In connection with our discussion of these findings, we have also urged that the evidence relating to particular issues warranted cancellation of petitioner's certificate of citizenship.

Petitioner, however, urges two propositions applicable generally to all the evidence: (1) that the Naturalization Act, as of 1927, was not intended to disqualify from citizenship aliens who adhered to communistic principles, beliefs, and organizations (Br. 14, 18–24); and (2) although not specified as error or as a reason for granting the writ of certiorari, that disqualification of an alien for the privilege of citizenship because of his adherence to such principles, beliefs and organizations is unconstitutional as an abridgment of freedom of political belief and thought, of speech, and of the press (Br. 27–31). We believe that these contentions are mistaken.

1. Petitioner construes (Br. 18) the Naturalization Act as setting up three tests: one, retrospective, behavior; two, present beliefs and party affiliations; and three, prospective, an oath of abjuration and allegiance. Concerning the first, behavior, petitioner contends that the statutory requirements are limited to residence for a specified period, proof that the alien is not a polygamist, and proof that petitioner " 'has *behaved* as a man of good moral character, attached to the principles of the Constitution and well disposed to the good order and happiness of the same.' " (Br. 18.) The latter requirement, in turn, petitioner contends (Br. 18–19) he has fulfilled since he has met the purely objective standards of behavior.

Even were the requirement of behavior limited to objective standards, we have shown that petitioner has not met them in that he gave his support to and aided in the distribution, dissemination and formulation of literature the ordinary import of which is to advocate force and violence (*supra,* pp. 86–88), in that he advocated and taught the overthrow of the Government by force and violence (*supra,* pp. 68–70, 82–93),[104] and in that he believed in and actively participated in an organ-

[104] We do not understand petitioner to question that one who personally advocates and teaches the overthrow of the Government by force and violence may be precluded from citizenship under the 1927 statutes. See Petitioner's Brief, pp. 5, 15–16, 25, 26.

ization which advocated general resort to violations of the law (*supra*, pp. 54–60).

In any event, it is settled that the test of behavior is not purely objective but that an alien must also in fact be attached to the principles of the Constitution and well disposed to the good order and happiness of the United States (*supra*, pp. 101–102). Petitioner thus has further failed to meet the required standards in that he was not in fact attached to principles of the Constitution or well disposed to the good order and happiness of the United States since he believed in, taught and advocated principles wholly at variance with the existing structure of the Government and with the Constitution (*supra*, pp. 94–110), and since he believed in, advocated, and taught the overthrow of the Government by force and violence (*supra*, pp. 68–70, 82–86, 88–93). Nor was petitioner in fact well disposed to the good order and happiness of the United States since he believed in, and actively participated in an organization which advocated, general resort to violation of the law to achieve the communist aims (*supra*, pp. 54–60).

Concerning the second test urged by petitioner, present beliefs and party affiliations, he contends (Br. 19–20) that the only requirements were that the alien not be a disbeliever in organized government or a member of or affiliated with any organization teaching disbelief in or opposition to organized government, and that he not be a believer in polyg-

amy. Even were this contention accepted, again petitioner did not meet the statutory criteria in that he disbelieved in and was opposed to, and was a member of an organization teaching disbelief in and opposition to, organized government (*supra,* pp. 110–114). But in addition, a reading of the Naturalization Act in the light of the deportation provisions in effect in 1927, requires the inclusion of the further standard that an alien, to obtain citizenship, not be deportable as a member of an organization which believes in, teaches, or advocates the overthrow of the Government by force and violence (*supra,* pp. 79–81). Here, too, petitioner lacked the statutory qualification in that he was a member of such an organization (*supra,* pp. 73–79).

Nor in respect of the third group of standards advanced by petitioner, the bearing of true faith and allegiance to the United States and renunciation of all other allegiance, has petitioner met the necessary criteria. Rather, the evidence shows not only that petitioner's allegiance was to the Communist Party and the Third International, but also that he was affirmatively lacking in allegiance to the United States (*supra,* point I, A, pp. 28–52).

Petitioner, however, seeks to avoid the conclusion that on any one of these bases the decree cancelling his naturalization certificate must be affirmed, on the broad ground that Congress has not specified active membership in the Communist

Party as a bar to naturalization and that, therefore, no such bar can be implied (Br. 18–24). A number of reasons, however, rob this contention of merit.

The contention, at the outset, seems to be based upon a misunderstanding of the Government's position and of the proof in this case. While in respect of certain qualifications mere proof of membership in the Communist Party, without more, is enough, with the exceptions noted in the margin,[105] our case rests not on membership *per se*, but upon petitioner's own views. It is our position that petitioner's own views, beliefs, and activities, whether they be termed communistic or not, disqualified him. It is true that it has been necessary to look to the literature of the Communists, to the structure and organization of the Party, and to the Party's relationship with its members, in order to determine what petitioner's views and allegiance were

[105] Mere proof of membership is sufficient to show (1) that, since the Naturalization Act must be read in connection with the deportation statutes, petitioner was disqualified because of membership in an organization advocating the overthrow of this Government by force and violence or disseminating literature to such effect (*supra*, pp. 60–81, 83–84); and (2) that petitioner was disqualified under a specific provision of the Naturalization Act as well as under the deportation statutes because of his membership in an organization disbelieving in or opposed to organized Government (*supra*, pp. 110–114). In addition, proof of membership, when coupled with appropriate evidence concerning the circumstances of such membership, is sufficient to show that petitioner, by reason of his membership in the Party, could not bear true faith and allegiance to the United States and lacked attachment to the Constitution (*supra*, pp. 28–52, 101).

at the time of his naturalization. In so far as petitioner undertook to deny that he adopted the views of his Party, his denial does not foreclose the issue but simply raises a question of the weight of the evidence. See *Whitney* v. *California*, 274 U. S. 357, 367; cf. *Allan v. United States*, 115 F. (2d) 804 (C. C. A. 9). Petitioner's own testimony must, in the course of determining his views, necessarily be measured against the doctrines of the Party of which he was a leader. See *United States* v. *Tapolcsanyi*, 40 F. (2d) 255, 257 (C. C. A. 3); cf. *United States* v. *Swelgin*, 254 Fed. 884 (Ore.). Particularly is this so where, as here, the organization requires of members inflexible conformance to its principles and acceptance of its programs (*supra*, pp. 29–45), where, as here, the member admits his affirmative adherence to the general principles of Communism (*supra*, pp. 6–7), and where, as here, the member of the Party is in a favorable position, through his leadership and active participation in classes and conventions (*supra*, pp. 4–6), to know the programs, principles and tactics of his Party.

That Congress may not have specified in terms active membership in the Communist Party as a bar to naturalization is, therefore, immaterial since, except as noted above (p. 120, n. 105), the case does not rest on membership *per se*.

Nor can the inference that Congress did not intend to preclude aliens from citizenship because of

their communistic beliefs be fairly drawn from its failure to specify such beliefs as a bar.[106] This is clear from the entire legislative history of the Naturalization Acts (*supra,* pp. 105–109). That history establishes that the broad and general phrases, such as attachment to the Constitution, were expressly designed to bar aliens with views and tenets contrary to fundamental principles of our existing form of government. It was recognized that the full range of disqualifying affiliations and beliefs could not be catalogued so as to assure full protection. The requirement of attachment to the Constitution was, as we have seen, regarded as precluding those with views of "Jacobins" or who favor the principles of "aristocracies," "monarchies," or "anarchies." Therefore, instead of attempting to specify each of the activities, beliefs, or affiliations which constitute disaffection for and lack of attachment to the principles of the Constitution and so bar aliens from citizenship, Congress adopted the familiar method of utilizing general standards, leaving to the courts the application of these standards in each case. Since 1790, the courts have delineated the lines of attachment, of allegiance, of good moral character, and of favorable dis-

[106] We do not understand that petitioner argues wholly to the contrary since he apparently concedes (Br. 5, 15–16, 25, 26) that advocacy of the overthrow of the Government or changes in the political structure by force and violence disqualified an alien from citizenship even though prior to 1940 Congress had not expressly specified such a disqualification.

position. Traditionally, this has been the function of the naturalization courts. In the light of this unambiguous history, it cannot validly be contended that a congressional failure to specify particular beliefs thereby evidenced an intent to permit holders of any such beliefs to become citizens.

Similarly, we do not believe that the subsequent legislative history of the Naturalization Act justifies the conclusion that aliens found to hold and advocate the views here in issue were not intended by Congress to be barred from citizenship. The failure to pass two bills [107] (petitioner's br. 4; brief

[107] H. R. 12044 (72d Cong., 1st Sess., 1932) and H. R. 7120 (74th Cong., 1st Sess., 1935) were substantially identical. They proposed that the admission and deportation acts (40 Stat. 1012, as amended, 8 U. S. C. 137) be amended by including Communists, by name, among the classes of aliens excluded from admission into this country and deportable from it. H. R. 12044 defined a Communist as

> any alien who is a member of or affiliated with any organization which, or any alien who believes in, advises, advocates, or teaches (1) the overthrow by force and violence of the Government of the United States, or (2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or officers generally) of the Government of the United States or of any other organized government, because of his or their official character, or (3) the unlawful damage, injury, or destruction of property, or (4) sabotage, or (5) a doctrine which advocates the overthrow by force or violence of governments, constituted authority or social order, existing in countries not under the control of communists and the establishment in place thereof of (a) a regime termed

of *amicus curiae* 4–5) providing for exclusion of Communists as such from residence in the United States is not persuasive. These bills related to exclusion and deportation only. As we have already noted, the standards of political beliefs required for continued residence must, in respect of questions of attachment, of good disposition and of allegiance, be regarded as *minimum* standards implied in the Naturalization Act (*supra*, pp. 80–81). Even assuming that, by failing to pass these two bills, Congress did not intend that alien Communists be excluded or deported, it does not follow that therefore Congress also disapproved of *denial of citizenship* to alien Communists. Attachment to the Constitution, favorable disposition to the good order and happiness of the United States, and allegiance were not standards of alien admission or residence. Failure to pass these bills may simply have reflected the hope and confidence of Congress that the alien's exposure, in the course of his residence, to the American prin-

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"proletarian dictatorship" and/or (b) a system based upon common ownership of property and abolition of private property, provided that the platform, program, and/or objectives of the Third International or Communist International shall be held to embrace the said doctrine. No alien shall be held to be a communist under the provisions of this act if he shall prove that he became a member of such organization on account of fear, duress, compulsion, misrepresentation or fraud.

H. R. 7120 defined a Communist in substantially the same terms.

ciples would convert him from communist principles and qualify him for citizenship (see *supra*, p. 109, n. 98). Congress cannot be supposed to have made citizenship available to Communist aliens even if its hope and confidence proved not to be justified by the time the alien petitioned for naturalization.

But in any event even the assumption that Congress, in failing to pass these bills, intended that alien Communists be not excluded or deported does not appear to be warranted. It is clear that these bills were not regarded by Congress as changing the substantive law; rather they were intended primarily to relieve the Government of the burden of proving in each exclusion or deportation case that the Communist Party advocated the overthrow of this Government by force and violence.[108] Indeed, the chief basis of opposition to the bill was that the existing law was sufficient in that alien Communists were already deportable.[109]

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[108] In this sense, the recent congressional intent to exclude or deny continued residence to Communists is not inconsistent with the earlier intent to permit aliens who hold substantive beliefs different from ours an opportunity to "acquire a taste for this kind of government" (*supra*, p. 106). In the more recent bills, aliens were to be excluded not because of their substantive political principles but because Congress found that such principles were to be achieved by improper means, *viz*, force and violence. See *supra*, p. 123, n. 107.

[109] In respect of H. R. 12044 (72d Cong., 1st Sess.), see H. Rep. No. 1353, 72d Cong., 1st Sess., p. 3; S. Rep. No. 808, 72d Cong., 1st Sess., p. 2; 75 Cong. Rec. 12097, 12098, 12105,

2. Whatever the difficulty of squaring a *penalty* for political beliefs with traditional freedom of thought and expression, that is not the issue in this proceeding. Congress may properly use as a touchstone in naturalization proceedings an alien's political beliefs and loyalty.[110] It can scarcely be doubted, and petitioner does not apparently question, that it is fully within the constitutional competence of Congress to insist, before it grants citizenship, upon attachment to the principles of the Constitution and belief in organized government. See *Turner* v. *Williams,* 194 U. S. 279, 293. Yet these undoubtedly proper standards are standards of political beliefs even if the direct proscription of them would infringe the Bill of Rights.[111]

12106, 12107. In respect of H. R. 7120 (74th Cong., 1st Sess.), see H. Rep. No. 1023, Pt. 1, 74th Cong., 1st Sess., p. 2. Compare the statement of Congresswoman O'Day, presenting minority views in opposition to H. R. 7120; that in respect of advocacy of overthrow of this Government, the new provisions only repeated existing law, and that the proposed amendments "would even if it were practicable, accomplish practically nothing more than can be and is being accomplished under the present law. It is apparently not denied by the majority of the Committee that Communists are being deported under the present law" (H. Rep. No. 1023, Pt. 2, p. 2).

[110] Cf. 8 U. S. C. 703, which limits naturalization to "white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere."

[111] The judicial construction of deportation and naturalization statutes has apparently been unaffected by consideration of the extent to which freedom of speech and assembly might

Congress could, in its discretion, have transmuted the constitutional guarantees into legal rights due aliens seeking citizenship in the United States simply by not prescribing requirements of attachment, favorable disposition, and allegiance. It may be thought that such a course might have been more consonant with our traditions of free political thought, as well as with our traditional confidence that, where full freedom is permitted, democratic institutions are so strong that they will of their own force not only repel inconsistent political thoughts but also persuade newcomers to our country, as well as others, who hold such inconsistent political thoughts that their beliefs are incorrect and ours are not. But the answer seems clear that, in so far as here involved, the choice of standards is legislative, not constitutional. Since Congress has unquestionably chosen political beliefs as one of the qualifications for naturalization, the issue is for present purposes foreclosed.

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be directly abridged under the Constitution. See *Turner* v. *Williams*, 194 U. S. 279, 294; cf. *Lopez* v. *Howe*, 259 Fed. 401 (C. C. A. 2), appeal dismissed and certiorari denied, 254 U. S. 613, 650; *Ex Parte Pettine*, 259 Fed. 733, 735 (Mass.); *United States ex rel. Fortmueller* v. *Commissioner of Immigration*, 14 F. Supp. 484, 487 (S. D. N. Y.). Nor has the *imminence* of the changes or other actions which an alien advocates been regarded as a factor in construing the statutes. See *United States ex rel. Georgian* v. *Uhl*, 271 Fed. 676, 677 (C. C. A. 2), certiorari denied, 256 U. S. 701; *Kjar* v. *Doak*, 61 F. (2d) 566, 568 (C. C. A. 7); *United States ex rel. Aberu* v. *Wallis*, 268 Fed. 413, 416 (S. D. N. Y.).

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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APPENDIX A

STATUTORY PROVISIONS

8 U. S. C. 405 provides:

> It shall be the duty of the United States district attorneys for the respective districts, or the Commissioner or Deputy Commissioner of Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured * * * (Act of June 29, 1906, c. 3592, sec. 15, 34 Stat. 601, as amended).

8 U. S. C. 364 provided: [112]

> No person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United

[112] This and the following statutes are stated as of the time of petitioner's naturalization.

States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States. (Act of June 29, 1906, c. 3592, sec. 7, 34 Stat. 598.)

8 U. S. C. 381 provided:

> He [any alien] shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state or sovereignty and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same. (Act of June 29, 1906, c. 3592, sec. 4, 34 Stat. 597.)

8 U. S. C. 382 provided:

> It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States, five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to

the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record. (Act of June 29, 1906, c. 3592, sec. 4, 34 Stat. 598).

8 U. S. C. 137 provided in pertinent part:

Other aliens excluded. In addition to the aliens who are by law otherwise excluded from admission into the United States, the following persons shall also be excluded from admission into the United States:

* * * * *

(c) *Aliens believing in, advising, etc., overthrow by force or violence of United States Government, or all forms of law, unlawful assaulting or killing of any Government officers, unlawful damage, etc., to property, or sabotage.*

Aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States, or of any other organized government, because of his or their official character, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage.

(d) *Aliens writing, publishing, etc., written or printed matter, advising, etc., opposition to organized forms of government, overthrow by force or violence of United*

States Government or all forms of law, unlawful assaulting or killing of Government officers, unlawful damage, etc., to property, or sabotage.

Aliens who write, publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, distribution, publication, or display, any written or printed matter, advising, advocating, or teaching, opposition to all organized government, or advising, advocating, or teaching: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or any other organized government, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage.

(e) *Aliens members of or affiliated with organization, etc., writing, etc., written or printed matter described in preceding paragraph.*

Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (d).

(f) *What constitutes advising, advocacy, teaching, or affiliation.*

For the purpose of this section: (1) the giving, loaning, or promising of money or anything of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and (2) the giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation.

(g) *Deportation.*

Any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in this section shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in this subchapter. The provisions of this section shall be applicable to the classes of aliens mentioned therein irrespective of the time of their entry into the United States. (Act of October 16, 1918, c. 186, secs. 1–2, 40 Stat. 1012; June 5, 1920, c. 251, 41 Stat. 1008.)

APPENDIX B

SUMMARY OF THE HISTORY AND STRUCTURE OF THE COMMUNIST ORGANIZATIONS

The history, structure, and relationships of the various communist organizations referred to in the evidence may be summarized as follows:

The Third Communist International. Some time before 1848 the Communist League was organized by Karl Marx and Friedrich Engels. In November 1847, in London, Marx and Engels were directed by the League to prepare a theoretical and practical party program (Ex. 16, p. 121, R. 187; Ex. 7, preface, p. 3, R. 123). Pursuant to this instruction, "The Manifesto of the Communist Party" was written in German and immediately before the Paris insurrection of June 1848 was translated into French (Ex. 7, preface, p. 3, R. 123). The first English translation appeared in London in 1850 (*ibid.*). The defeat of the Paris insurrection, and the conviction and imprisonment of members of the Central Board of the Communist League ultimately led to the dissolution of the League in 1852 (*id.*, pp. 3–4).

In 1864, the International Workers Association, later known as the First International, was established in London under the leadership of Marx (Ex. 16, p. 121, R. 187; Ex. 26, p. 3, R. 274, 835). Its objective was to unite the proletariat of Europe and America; it did not, however, immediately

adopt the "Manifesto" but accepted a different program prepared by Marx (Ex. 7, preface, p. 4, R. 123). In 1871, the members of the First International participated in the Paris Commune (Ex. 16, p. 121, R. 187), but in 1874, the First International was dissolved (*ibid.;* Ex. 7, preface, p. 4, R. 123).

The Second International was established in 1889 at Paris (Ex. 26, p. 3, R. 274, 835) at an international conference of representatives of socialist parties (Ex. 16, p. 121, R. 187). Its objective was to continue the work of the First International (Ex. 26, p. 3, R. 274, 835). The World War, 1914–1918, however, interrupted the Second International, and, according to the Third International writings, the Second International collapsed because its leaders and the Social-Democratic parties and labor leaders in the nations at war supported their respective governments during the war (Ex. 26, p. 4, R. 274, 835; Ex. 16, pp. 121–124, 129, 135, R. 187; Ex. 6, pp. 6, 20, R. 109).

A new movement began with the October 1917 Revolution in Russia and the establishment of the Soviets (Ex. 16, p. 134, R. 187). In March 1919, at the First International Communist Congress, the Third Communist International was created, and it adopted the platform submitted by the German and Russian delegates (*id.,* p. 135). At the Second World Congress held in Moscow, July 17 to August 7, 1920, the Third International adopted "The Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26, R. 274, 835) and announced its objective as the continuation of the cause initiated by the First International Workers Association (*id.,* p. 4).

The Third Communist International was designated as the single universal Communist Party, of which the parties in each country were to be "sections" (*ibid.*, p. 5).[113] The supreme body of the Third Communist International was the World Congress of the Communist International (*ibid.*), which was to convene biannually and which comprised representatives of all sections (parties) and organizations affiliated with the Communist International (Ex. 6, p. 87, R. 109). All representatives to the World Congress were required to be sent with a "free mandate" (*i. e.* uninstructed); no "imperative mandate" was recognized (*ibid.*).

The World Congress of the Communist International was empowered to decide, approve, and determine the program, tactics and organizational questions of the Communist International and of all sections (Ex. 26, pp. 5–6, 31, R. 274, 835; Ex. 6, p. 87, R. 109). Its resolutions and regulations were binding on all sections (Ex. 26, p. 31, R. 274, 835; Ex. 6, p. 86, R. 109).

The supreme body of the Third Communist International in the periods between Congresses was the Executive Committee of the Communist International (Ex. 26, p. 6, R. 274, 835; Ex. 6, p. 88, R. 109). The particular country in which the Executive Committee "finds its residence at the time" was given the major voice in the Committee; it had

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[113] The International League of Communist Youth was also established as a section of the Communist International subordinate to it and to the Executive Committee of the Communist International (Ex. 26, p. 8, R. 274, 835). A women's section of the Communist International was also established (*ibid.*).

not less than five representatives on the Committee holding "decisive votes" (Ex. 26, p. 6, R. 274, 835). Other large communist sections were entitled to one representative each, with a decisive vote, while the remaining organizations embraced in the Communist International were permitted one representative each, with a "consultative" vote only (*ibid.*).[114]

The Executive Committee's powers, in general, included those of the World Congress, and were to be exercised in the periods between Congresses. The Committee was empowered to confirm all party programs, to issue instructions binding on all sections and parties, to exclude affiliated organizations failing to comply with the regulations issued by the World Congress, and to resolve all organizational questions (*ibid.;* Ex. 6, pp. 88–89, R. 109). The Executive Committee's decisions were obligatory upon all sections pending appeal to the World Congress; the Committee was also vested with authority to annul or amend decisions of Party Congresses, and to expel sections, groups, or individual members (Ex. 6, p. 88, R. 109).

The Executive Committee, in turn, elected a Presidium, responsible to it, to act as a permanent body to carry out its business between meetings (*id.*, p. 89).[115] The Presidium, further, elected a Politi-

[114] The Executive Committee was authorized to include representatives, with consultative votes only, of organizations sympathetic to the International but not yet accepted by it (Ex. 26, p. 7, R. 274, 835).

[115] The Executive Committee was required to meet at least semi-annually, and the Presidium bi-weekly (Ex. 6, p. 90, R. 109).

cal Secretariat to act as the executive body (*id.*, p. 90). The Executive Committee and the Presidium were authorized to establish, throughout the world, permanent bureaus of the Executive Committee to harmonize the work of the various sections; sections were required to observe all instructions issued by such bureaus (*id.*, pp. 89–90). The Executive Committee and the Presidium were also empowered to send instructed representatives to the sections, with authority to participate in the local meetings to which they were sent, and to supervise the local execution of decisions of the World Congress and Executive Committee (*ibid.*). In addition, all sections and other organizations affiliated with the Communist International were required to send minutes of their meetings and reports of their work to the Executive Committee (*id.*, p. 91).[116] Members of the central committees of the sections were permitted to resign only with the consent of the Executive Committee; its permission was also required before section congresses could convene (*id.*, pp. 91–92).[117]

The Communist Parties in the United States. The Communist Parties in the United States find their origin in the expulsion, in 1919, by the Socialits Party, of its left-wing members (Ex. C, p. 270, R. 427; Ex. 12, p. 166, R. 241). At a convention, held in December 1921, several groups of left-wing

[116] An International Control Commission had been established by 1928 with power to investigate the unity of all sections, and the conduct of individual members (Ex. C, p. 91, R. 109).

[117] Sections were required to pay affiliation dues to the Executive Committee in the amount determined by it (Ex. 6, p. 92, R. 109).

Socialists and Communists established the Workers' Party of America (Ex. 26, Workers Party foreword, inside cover, R. 274, 835; R. 838). Even before its formal organization, the Workers' Party was structurally related to the Communist International and had sent delegates to the Third World Congress earlier in 1921 (Ex. 14, p. 8, R. 255). By the time of its fourth national convention in 1925, the Party had changed its name to the Workers' (Communist) Party (Ex. 12, cover title page, p. 166, R. 241; but cf. R. 91, 93). In 1929, the name was again changed, this time to the Communist Party of the United States of America (R. 93). Throughout, however, the identity of the Party remained the same (R. 91–92, 185, 240; Ex. C, p. 270, R. 427; Ex. 12, p. 166, R. 241).

The Workers' Party of America, and the Workers' (Communist) Party were affiliated with the Communist International (R. 202, 831) and comprised one of the International's sections (R. 201–203; Ex. 12, pp. 71–72, 123, 166, R. 241; Ex. 14, p. 9, R. 255). These parties sent accredited representatives to the Communist International (R. 203); they recognized the leadership of the International (Ex. 12, pp. 18, 63, 65–66, 166, R. 241; Ex. 13, pp. 13, 56–61, 86, 100, R. 248) and accepted its instructions (Ex. 12, pp. 41, 65–66, R. 241; Ex. 13, p. 13, R. 248).[118]

The Communist Youth organizations. The International League of Communist Youth (Communist Youth International) traces its history to

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[118] For petitioner's testimony and our discussion of the relationship of the American Parties to the International, see *supra*, pp. 32–45.

the Stuttgart Inauguration Congress of the Youth International, held in 1907. Its theoretical bases lay in Marx's writings concerning juvenile labor, in the draft of "Declaration of Principles" (1916), in Lenin's articles on youth, and in the Program of the Communist International adopted at the Sixth World Congress (Ex. 10, foreword, p. 7, R. 152). In 1929, the Fifth World Congress adopted the "Programme of the Young Communist International" (Ex. 10, R. 152), which, in turn, was confirmed by the Presidium of the Executive Committee of the Communist International (*id.*, p. 15).[119]

The Berlin Programme of the Young Communist International (1919) defined the relationship between the Young Communist International and the Communist International as one of harmony and cooperation, with no elements of leadership and subordination (Ex. 10, foreword, p. 9, R. 152; R. 153). The Second Congress of the Young Communist International, however, in 1921 adopted the principle of subordination of the Young Communist Leagues to the Communist Parties (*id.*, foreword, p. 10).[120] By 1928, the Young Communist International had been designated as a section of the Communist International with full rights and subordinate to the Executive Committee of the Communist International (Ex. 6, p. 92, R. 109).

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[119] This program which summarized the previous "colossal experience in revolutionary practice by the Young Communist Movement" was issued in 1929 (Ex. 10, pp. 8, 14, R. 152). The edition in evidence was issued under the name of the Young Communist League of America (*id.*, title page).

The Young Workers' League bore, in general, the same relationship to the Young Communist International as the American parties to the Communist International. It was affiliated with the Young Communist International and the Communist International (R. 90, 208), and sent delegates to the Congress of the Young Communist International (R. 90). In turn, the Young Workers' League was closely related to the Workers' Party of America. It sent delegates to the latter's conventions (Ex. 13, p. 123, R. 248). One member of the Workers' Party's Central Executive Committee was elected by the Young Workers' League (*id.*, p. 127); and this arrangement was continued when the Workers' (Communist) Party came into existence (Ex. 12, p. 165, R. 241). The reports of the national conventions of the parent bodies included reports embracing the work of the Young Workers' League (*id.*, pp. 7, 23–24).

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[120] The origin of the Young Workers' League is not disclosed by the record. It was open to those between the ages of 16 and 25 (R. 89). Its name was subsequently changed to the Young Workers' Communist League, and then to the Young Communist League (R. 89–90).

Prior to 1921, the Communist International had provided in the "Statutes, Theses and Conditions of Admission" that the International League of Communist Youth was subordinate to the Communist International and the Executive Committee of the Communist International, that the Executive Committee of the Young Communist International should have one representative, with a decisive vote, in the Executive Committee of the Communist International, and that conversely, the Executive Committee of the Communist International had the right to send one representative with decisive vote to the Executive Committee of the Young Communist International (Ex. 26, p. 8, R. 274, 835).

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APPENDIX C

THE COMMUNIST LITERATURE INTRODUCED BY THE GOVERNMENT

The following relates to the nature of the communist literature introduced in evidence; the method of preparation of the literature; and the method of its distribution:

A basic precept of communist tactics was systematic propagandization through publication and distribution of communist literature.[121] A corollary basic principle was that the literature be subject to rigid Party supervision. Thus in 1924, the Party's Central Executive Committee reported (Ex. 13, pp. 42–44, R. 248; see also Ex. 12, p. 78, R. 241) that in accordance with the policy established at the Second National Convention, the Party press had been brought under the centralized ownership of the Party, and the ownership of various publication agencies had been acquired by the Party. Strict adherence to Party principles was required of the literature: All Party periodicals were required to be edited by loyal Communists who had proved their loyalty to the proletariat revolution; the propaganda was to correspond to the programs and decisions of the Third International; and all periodicals were to be made

[121] See R. 98, 99, 100, 101, 210, 211, 212, 236, 238, 239, 240, 248, 252, 263, 269–270, 272, 273; Ex. 13, p. 42, R. 249.

subject to the Presidium of the Party, and the editors in no way given "an opportunity to abuse [their] autonomy" (Ex. 26, p. 27, R. 274, 835).[122] One editor was by convention resolution removed and replaced by a member who "understands, accepts, and fights for the Communist line of our Party and the Communist International" (Ex. 12, p. 145, R. 241), while another Communist was expelled from the Party upon charges which included the accusation that he had failed to comply with the instruction of the Communist International that he subject his paper to control of the Party (*id.*, p. 97). Books not in conformance with Party principles were barred from Party schools and classes (R. 163–164, 834).

The publishing agencies of the Communist Party, issuing its literature, included:

The Literature Department of the Workers' Party (R. 98; Ex. 13, p. 38, R. 248; Ex. 12, p. 54, R. 241); absorbed by The Daily Worker Publishing Company, a corporation, in January 1925 (Ex. 12, pp. 152, 156, R. 241).

The Liberator Publishing Company (Ex. 13, pp. 41, 42, R. 248; Ex. 12, pp. 56, 57, 59, R. 241).

The Daily Worker Publishing Company, a corporation (R. 212; Ex. 13, pp. 110–117, R. 248; Ex. 12, pp. 152–164, R. 241).[123] The campaign of the Party to found this corporation was initiated

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[122] The Party periodicals were, in turn, to publish all decisions and official documents of the Executive Committee of the Communist International (Ex. 6, p. 89, R. 109).

[123] Petitioner testified that he did not know whether this company was authorized to issue communist literature (R. 128).

by the Central Executive Committee on August 8, 1923 (Ex. 13, pp. 44, 110, R. 248) and continued until at least December 22, 1923 (Ex. 13, pp. 44, 110–117, R. 248). The campaign was successful, and the corporation commenced operations in January 1924 (Ex. 13, p. 115, R. 248), and during that year, and subsequently, it operated on an extensive basis (Ex. 12, pp. 152–164, R. 241). In January 1925, it took over the publication of Party pamphlets and books (Ex. 12, pp. 43, 156, 157, R. 241; R. 243). It cooperated with the propaganda section of Agitprop in the preparation of theoretical publications (books and pamphlets) (Ex. 12, p. 151, R. 241); it did all of the printing for the National Office of the Party, for the Party, and for a number of the Federations (*id.* p. 153, R. 241); it became the center of the Party's press (*id.* p. 21), the source of all communist literature in the United States and the agent here for all foreign communist publications (*id.*, back cover), purchased a building, printing plant and equipment (*id.*, pp. 157, 159), and financed, to a large extent, a number of Party institutions (*id.*, p. 153). After its establishment, the English language press of the Party, and the publication and distribution of Party literature, came under centralized management (*id.*, pp. 22, 155).

The Workers Library Publishers, a corporation (R. 99).[124]

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[124] Petitioner testified, on the one hand, that, long before he had become a Communist, this organization had been organized by members of the Party to publish communist literature (R. 99) and, on the other hand, that it was not a communist organization or controlled by the Party (R. 830).

The International Publishers, a corporation (R. 99).[125]

The Western Workers Publishing Company (R. 272).

The Party distributed and circulated its own literature (Ex. 13, p. 27, R. 248; Ex. 12, pp. 13, 42, 43, 157, R. 241). Petitioner also testified that the Party maintained bookstores (R. 159, 238, 239, 240, 273; Ex. 13, p. 42, R. 248), and that some of the bookstores were not under the control of the Party but, as he understood it, were agents of the International Publishers or the Workers Library Publishers (R. 830). In addition, for the dissemination and study of its literature, the Party maintained a speakers' bureau (Ex. 13, p. 32, R. 248), and established, maintained and conducted schools, study classes and forums.[126]

The literature introduced in evidence by the Government, its nature and distribution, and petitioner's familiarity with it, may be summarized as follows:

1. Official constitutions, programs, and reports of activities covering the period prior to and shortly after 1927:

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[125] Petitioner testified that in recent years, the Party "carried on its work" through this organization and the Workers Library Publishers (R. 99) but that they were not controlled by the Party (R. 830).

[126] R. 87, 88, 93–94, 185, 193, 194, 196, 197, 198, 200, 203, 204, 205, 222. The systematic educational work was reflected in the "Resolution on the Bolshevization of the Party," adopted by the Fourth National Convention (Ex. 12, pp. 91–92, R. 241), requiring Party leaders to lecture in Party schools and to members, and further requiring the establishment and development of a corps of members

"Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26, R. 274, 835). This work was issued by the Workers' Party of America in 1923 (*id.*, inside front cover). The "Statutes" constituted the precepts of the Workers' (Communist) Party in 1925 (Ex. 12, pp. 137–138, R. 241). The copy in evidence was seized in a raid on Communist headquarters in 1928, and a number of other copies were taken from Party leaders on their arrest (R. 274). Petitioner testified that he had no recollection of the particular edition in evidence, that he did not know of the Party's having published a work of this kind, but that he had no doubt that "possibly" a pamphlet called "The Statutes and Resolutions of the Communist International" was sold in the bookshops (R. 836).

"Program and Constitution of the Workers Party of America" (adopted at National Convention, December 1921, amended at National Convention, 1923–1924) (Ex. 27, R. 276; see R. 233, 275–276; Ex. 13, pp. 73–86, R. 248). This work was published by the Literature Department of the Workers' Party (R. 98; Ex. 12, pp. 54, 152, 156, R. 241; Ex. 13, p. 38, R. 248). It was distributed by the Party to members (R. 233, 275) and during 1925–1926 was circulated by the Party (R. 275). Over a half-million copies were distributed (Ex. 13,

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trained in theory, capable of carrying out the task of education. Petitioner as educational director of the Young Workers' League organized forums and study classes for that organization (R. 87) and also participated in the classes or forums maintained by the Workers' Party and Workers' (Communist) Party (R. 93, 94, 185, 201).

p. 27, R. 248). The copy in evidence was obtained from Party headquarters in 1927 (R. 235, 239, 248). Petitioner testified that he was not "personally" familiar with this work, but he nevertheless explained its general contents (R. 836–837).

"The Second Year of the Workers Party of America" (including the constitution, program, and the report of the Central Executive Committee, Third National Convention, 1923–1924) (Ex. 13, R. 248). This work was published by the Literature Department of the Workers Party (see cover, title page), was distributed by the Party as its official report, and was sold and distributed by Party book stores (R. 248; see Ex. 12, pp. 54, 152, 156, R. 241; Ex. 13, p. 38, R. 248). Petitioner testified that he was not familiar with this pamphlet (R. 161, 883).

"The 4th National Convention of the Workers (Communist) Party" (including Report of the Central Executive Committee and Resolutions) (1925) (Ex. 12, R. 241). This was published by the Daily Worker Publishing Company (cover, title page), was distributed by the Party as an official document (R. 240–241) and was sold and circulated by the Party (R. 238, 240). Petitioner testified that he was not familiar with the work (R. 160) although earlier he had testified that he attended the convention whose proceedings the work reports (R. 97).

"The Platform of the Class Struggle" (National Platform of the Workers (Communist) Party, 1928) (Ex. 15, R. 264). This pamphlet was published by the Workers Library Publishers (title page), was distributed by the Party as its offi-

cial 1928 platform and as an official publication (R. 263). It was sold in Party book stores (*ibid.*). Petitioner testified that he was not familiar with this work, and had not attended the convention at which it was adopted, but that he agreed with the general programs and principles of the Party at that time (R. 162). It should be noted that it was during this year that petitioner attended the Sixth World Congress of the Communist International in Russia (R. 834).

"Acceptance Speeches" (William Z. Foster and Benjamin Gitlow, candidates for President and Vice-President on Workers' (Communist) Party ticket, 1928) (Ex. 14, R. 255). This work was published by the Workers Library Publishers (title page), was circulated by the Party as an official document (R. 254), and was distributed by it (R. 254, 255). Petitioner testified that he was not present at the convention at which the speeches were delivered and was unfamiliar with the book (R. 158). It was in 1928 that petitioner was in Russia (R. 834).

"Programme of the Communist International" (adopted in 1928) (Ex. 6, R. 109). This work was published in 1929 by the Workers Library Publishers (R. 110). It was circulated by the Party, and sold and distributed by it in book stores as official literature (R. 237). It was used in the Party educational program and study classes (R. 206). Petitioner testified that he was familiar with this program "in so far as I have read the resolutions and reports of that [Sixth World] Congress" (R. 103; cf. R. 834) and that he agreed with its general "political" (R. 103) or "theoretical" (R. 108)

conclusions. Petitioner attended the Sixth World Congress which adopted this program (R. 834).

"Programme of the Young Communist International" (1929) (Ex. 10, R. 152). This program, adopted in 1928 (R. 833, 834), summarized the previous revolutionary experience of the Young Communist movement, and was published by the Young Communist League of America (Ex. 10, title page, and p. 8, R. 152). It was circulated by the Party, and distributed and sold in Party book stores as official literature (R. 237). It was used in the Party educational program and study classes (R. 147–148, 207–208). Petitioner testified that he was familiar with this work (R. 147).

2. Literature covering the period prior to petitioner's naturalization and relating to the communist program, activities, tactics, and principles:

Stalin, "The Theory and Practice of Leninism" (1924–1929, R. 158) (Ex. 11, R. 212). This work was published by the Daily Workers Publishing Company (cover, title page). A different edition of this work was used in the Party study classes from June 1924 to April 1926 (R. 209–210; see R. 185, 194, 201, 222). Petitioner testified that he had read and was familiar with this work but not the particular edition in evidence (R. 158, 159). Petitioner did not introduce the edition with which he was familiar.

Lenin, "The State and Revolution" (April 1924) (Ex. 8, R. 129). This work was published by The Daily Worker Publishing Company (cover, title page), was circulated by the Literature Department of the Workers Party of America, was distributed by the Workers' (Communist) Party in several edi-

tions, and was sold by Party book stores (R. 127-128, 238–239). It was "probably" used in the study classes and educational program of the Young Workers' League during the period when petitioner was the League's educational director (R. 89, 128). It was also used in the study classes of the Workers' Party and the Workers' (Communist) Party (R. 94, 206–207). Petitioner's testimony indicated his familiarity with this work (R. 89, 127–128).

Bucharin and Preobraschensky, "A B C of Communism" (Vol. I) (Ex. 16, R. 187) (dated at Moscow in 1919) (Ex. 16, p. 7), translated in 1921 (Ex. 16, p. 4). This work was published between 1920 and 1924 by the Literature Department of the Workers Party of America (cover, title page) and was officially circulated by the Party (R. 269). It was expressly designed for study class purposes (Ex. 16, pp. 5–6) and was used in 1924 and 1925 as a text book in the Workers' Party study classes and in instructing teachers (R. 185, 186, 193, 194, 202). Petitioner testified that he had read and was familiar with this book (R. 163) but that it was subsequently withdrawn from use in, and barred from, the Party schools because its authors disagreed with the Party on several issues (R. 163–164, 834).

Lenin, "'Left-Wing' Communism: An Infantile Disorder" (written, 1920; copyright, 1934; third printing, 1937) (Ex. 9, R. 144). This authorized edition (R. 144) was published by International Publishers (Ex. 9, cover, title page). This work was circulated by the Party a few years after 1920 (R. 143), was distributed and sold by the Party bookstores (R. 239), and was used in the

study classes of the Young Workers' League during the period when petitioner was the League's educational director (R. 87, 89), as well as in other Party study classes (R. 144, 207). Petitioner testified that he was familiar with this work (R. 143).

Marx and Engels, "Manifesto of the Communist Party" (1932) (Ex. 7, R. 123). This was an authorized Party publication (R. 122–123) published by International Publishers (Ex. 7, cover, title page). This work was circulated by the Party, sold in Party book stores (R. 237–238), and used in the Party educational program and study classes (R. 206). Petitioner testified that he was familiar with this work (R. 122–123).

3. Literature published subsequent to petitioner's naturalization and relating to the communist program, activities, tactics, and principles:

Olgin, "Why Communism? Plain Talks on Vital Problems" (1935) (Ex. 18, R. 166) (prior editions, 1933, 1934, see back of title page). This work was published by the Workers Library Publishers (title page). It was one of the most widely distributed of Party pamphlets, was sold in Party book stores and circulated by the Party (R. 165, 220–221, 272–273, 835). It was also used as a text book in Party classes (R. 220, 221). Several other editions of the same work were published by the Western Workers Publishing Company (R. 272). Petitioner testified that this book was published while he was out of the country, that he had heard and read about it, but did not believe he had ever read it (R. 165).

U. S. GOVERNMENT PRINTING OFFICE 1942

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 2

WILLIAM SCHNEIDERMAN

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

Pursuant to permission granted by this Court, this brief is filed in response to several contentions made in the course of oral argument and made by petitioner in his reply brief filed immediately before oral argument. Many of petitioner's contentions urged in his reply brief and at oral argument have already been fully discussed in the Government's main brief and require no further reply. Nevertheless certain new contentions relating to the evidence in the record are made for the first time and are, we submit, without merit.

1. Petitioner raises two technical objections to the Government's use in its brief and in its oral

argument of certain material embodied in the original exhibits. These exhibits consist of books, pamphlets and other documents, listed at pages 145 to 151 of our main brief, and comprising official constitutions, programs and reports, and literature relating to the Communist program, activities, tactics and principles. In general petitioner attacks the use of these exhibits (Government Exhibits 4 to 26, inclusive) on the ground that they are not in the printed record (reply brief, p. 3). In Appendix II of his reply brief, petitioner further suggests that since these exhibits do not appear in the printed record they are therefore not a part of the record. It was apparently upon the basis of this contention that petitioner at the close of oral argument urged that the Government's case rested entirely upon evidence not in the record.

We think that petitioner's point is based upon a misunderstanding of the situation. The record seems plainly to show that the original exhibits are a part of the record, and that the excerpts printed in the transcript do not comprise the sole material on which reliance may be had.[1] The original "Request for and Designation of Record" filed on August 23, 1940, by petitioner's own

[1] Petitioner's present insistence that the Government may rely only on the brief excerpts from the exhibits which were read into the record and form a part of the printed transcript is inconsistent with his argument that the Government has rested upon quotations wrested from their context.

counsel,[2] but not referred to in petitioner's reply brief (see p. 31, note), shows that petitioner designated as part of the record on appeal to be [redacted] in the court below "one copy of all exhibits in evidence or offered for identification" (R. 59). In response to this designation, Michael J. Roche, Judge of the District Court, ordered the Clerk to "transmit to and deposit with the Clerk of the United States Circuit Court of Appeals all original exhibits introduced in evidence or for identification in the trial of the above-entitled matter" (R. 60).

Subsequent to this designation of the record, the United States Attorney filed a designation (R. 902–903) stating that petitioner had failed to file or serve upon the Government a designation of the record *to be printed;* the United States Attorney therefore made his own designation of the portion of the record to be printed. This designation did not include original exhibits 4 to 26 except for the excerpts now found in the transcript. On the following day, October 19, 1940, petitioner filed a second designation of the record identical to its designation of August 23, 1940, except for the omission of the designation of the original exhibits (R. 903–904).

The original exhibits were before the court below and were considered by it as a part of the record. The court below expressly referred (R.

[2] See Rule 75 (a) of the Federal Rules of Civil Procedure.

916) to the fact that the evidence consisted of "books, pamphlets, and writings." Further the certificate of the clerk of the court below (R. 921) shows that the two volumes of transcript as well as the original exhibits were considered to comprise the record of the court below. This is further established by the fact that the clerk of the court below in response to the order allowing certiorari transmitted to the Clerk of this Court all of the original exhibits.[2] In addition a certificate to the original exhibits, filed by the clerk of the court below in the office of the Clerk of this Court on October 25, 1941, certified that all of the original exhibits introduced both by the Government and by the petitioner at the trial "are the exhibits and all of the exhibits filed in my office" in the cause.

In these circumstances we submit that the record shows that the original exhibits were before the court below and are properly a part of the record in this Court. We think that petitioner has confused the rules relating to the transcript of the record with the rules relating to original exhibits. We are informed that it has been the uniform practice of this Court to distinguish between the requirements for inclusion in the printed record and the requirements relating to original

[2] A copy of the letter addressed to the Clerk of this Court was received by the Department of Justice on October 27, 1941, and is in the Department of Justice file.

exhibits. For like reasons, we think that petitioner has mistaken the effect of his second designation of the record in the court below and of Rule 19, paragraph 6, of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit. Both the second designations and the rule seem clearly to relate only to the portion of the record *to be printed* and not to what is to constitute the entire record, which had already been designated by petitioner (R. 59). While Rule 19, paragraph 6, provides that if the parties shall designate the record, "the Clerk shall print those parts only; and the Court shall consider nothing but those parts of the record * * *", it is obvious that this rule does not apply in the case of "models, diagrams, and exhibits of material forming part of the evidence."[4] See Rule 18 of the court below. It would seem clear that the court below did not intend by its rule to preclude, and did not in fact preclude, from its consideration all materials which are not printed but which had been designated, as here. Indeed, as pointed out above, it appears both from the decision of the

[4] It should be noted that the designation of the record by the United States Attorney was a designation for *printing* only (R. 902). Petitioner's second designation (R. 903–904) in response to the United States Attorney's designation, was undoubtedly regarded also as a designation for printing, while its first designation (R. 59) was plainly a designation of the *record* on appeal (without regard to printing) pursuant to Rule 75 (a) of the Federal Rules of Civil Procedure.

court below and from the certificates of its clerk that in fact the original exhibits in this case were before the court and were considered by it.

We cannot emphasize too strongly, as suggested in the Government's oral argument, the importance of considering not excerpts alone but the entire exhibits upon which both courts below based their decisions (R. 43–44, 916). Indeed, consideration of the full exhibits is necessary for a fair understanding of the contentions of both parties.

Petitioner also urged at oral argument and in his reply brief (pp. 4, 27) that Exhibit 26, "Statutes, Theses and Conditions of Admission to the Communist International," was not in evidence in the case at all. This exhibit was marked as a Government's exhibit for identification in the earlier stages of the hearing before the District Court (R. 274). The consistent practice of counsel of thereafter placing the exhibit in evidence, followed in respect of all other exhibits, appears not to have been followed. However, the exhibit was treated by petitioner's own counsel as in evidence at the trial. While petitioner states in his reply brief (p. 4) that "Government counsel at the trial asked petitioner if he knew the document, and, in so doing, prefaced his statement with the statement 'Now, referring to Exhibit Number 26 in evidence * * *'" the record establishes that this statement was made *by peti-*

tioner's counsel,[5] in the course of his examination of petitioner. It therefore plainly appears that both parties accepted Exhibit 26 as in evidence, and indeed had petitioner's counsel not made the statement above quoted, treating the exhibit as in evidence, the omission to do more undoubtedly would not have occurred. In these circumstances, it is clear that the Exhibit may be treated as in evidence.

Wright v. *Roseberry,* 81 Cal. 87, 92, (1889);

O'Callaghan v. *Bode,* 84 Cal. 489, 497 (1890).

2. Petitioner in his oral argument and in his reply brief (pp. 3, 29–30) lays great stress upon the Government's use of literature published subsequent to 1927. The dates of the publication of literature were set out fully in the Government's main brief (pp. 145–151) and were stressed further where relevant in its main brief (see pp. 30, note 15; 35, 47, note 32; 84–85) and in its oral argument. Chief among the documents published subsequent to 1927 relied on by the Government are "The Platform of the Class Struggle" (Ex-

[5] At p. 829 of the Record, Mr. Andersen, petitioner's counsel at the hearing (R. 62) resumed examination of petitioner. He questioned petitioner concerning a number of exhibits and in the course of such questioning, at p. 835 of the Record, made the statement referred to in the text. It should be noted that this statement made by petitioner's counsel concerning Exhibit 26 was identical to his statements made in discussing other exhibits which had in fact been introduced (see R. 833, 834, 836).

hibit 15), "Acceptance Speeches" (Exhibit 14), "Programme of the Communist International" (Exhibit 6), and "Program of the Young Communist International" (Exhibit 10). Each of these constituted official literature, officially distributed by the Party and were either published in 1928 or adopted as programs in that year (see main brief, pp. 147–149). Because of their nature, and considered with all the evidence, it is plain that they were statements of principles, programs, and policies of a period shortly before their publication or formal adoption. In these circumstances, as we pointed out in our main brief, we think that they are sufficiently contemporaneous with petitioner's naturalization in 1927 to be probative of the Party's principles and petitioner's views during the relevant period. They are a part of a continuous program which was then of a single pattern.

3. Petitioner makes a number of other contentions relating to the probative value of certain of the exhibits relied upon by the Government in its brief and in its oral argument. Thus, petitioner contends (Reply Brief p. 28) that the "Program and Constitution of the Workers Party of America" was "never finally adopted by the Party." Plainly, however, petitioner's contention is based upon the broad proposition urged at the trial in the District Court that the 1938 Constitution of the Communist Party (Exhibit 5) is the only official expression of the principles of the Party

and that prior to that constitution the Party had no official written program.[6] This argument has been discussed fully at pages 74–76 of the Government's main brief. Petitioner in his own reply brief (p. 27) refers to this exhibit as having been "*adopted* at National Convention in 1921 and amended at National Convention in December 1923 and January 1924", yet in oral argument criticized the Government for having stated just th... [Italics supplied.] At most the issue raised is one only of petitioner's credibility—of the relative force of petitioner's own testimony concerning a Party program [7] and the showing on the face of these exhibits that they comprised the programs and official statements of the Party (see, also, R. 275–276). And it should be noted that the very position which petitioner held in the Workers Party of America—City Central Secretary in Los Angeles (R. 92, 175)—during the effective date of this Constitution was one which was expressly created by Article V, Section 5 (R. 302), thereof. This would seem plainly to indicate that the Party was operating under the Constitution and that petitioner knew it.

In addition petitioner has stressed in his oral argument and in his reply brief (pp. 26–30) that he was not familiar with many of the documents

[6] See R. 364–365, 836–839.

[7] The record shows that petitioner's testimony that Exhibit 27 was never officially adopted was itself based on hearsay (R. 837).

relied upon by the Government.[8] This issue again raises at most a question of credibility which was plainly resolved against him by the District Court. Petitioner unequivocally testified that during all the period when he was a member of the Young Workers League, the Young Workers Party, the Young Workers Communist League, the Young Communist League, the Workers Party, the Workers Communist Party and the Communist Party of the United States of America, he subscribed to the principles of those parties (R. 102). Indeed, petitioner in his reply brief (p. 24) states "All that can be said of him [petitioner] and all that is said of him is that he was a Communist, believing in the general social and political theses of that party." In these circumstances, he can hardly object to a resort to a reading of the documents showin those "social and political theses." His affirmative adherence to these principles alone not only warrants but requires reference to the officially distributed, officially published literature of those organizations and their official programs and statements of principles and tactics. The significance of his subscription to the principles can be measured only by ascertainment of and examination of those expressed principles. There can be no other

[8] Petitioner's familiarity with the literature was discussed in detail at pages 145–151 of our main brief, and the propriety of attributing such documents to him was discussed at pages 23–28.

method of ascertaining what the principles to which the petitioner testified he subscribed were in fact. In the light of his express adherence to those principles any subsequent disavowal through a later claim that he did not remember the documents or was not familiar with them is scarcely credible, for these are the very principles of the parties to which he admitted he subscribed.[9]

[9] Petitioner's suggestion (reply brief, p. 28) that the "Program and Constitution of the Workers Party of America" (Exhibit 27), adopted in 1921 and amended in December 1923 and January 1924, and the "Second Year of the Workers Party in America" (Exhibit 13), December 1923 and January 1924, cannot be attributed to him since he did not join the Workers Party until later in 1924 or 1925 (R. 91, 860, 884), is without force. It would seem even more proper to attribute to petitioner programs which had been crystallized and made public shortly *prior* to his joining than to attribute those formulated and adopted during his membership, since in the former case the program was before petitioner at the time he made his choice in joining. And in any event in 1923 and 1924 petitioner was a member of the Young Workers League (R. 86–87, 90, 860), which, as we have described in our main brief (p. 141), was simply the youth branch of the Communist International; and of the Workers Party; and in fact it sent delegates to the latter's conventions (Exhibit 13, p. 123, R. 248). Petitioner further suggests (Reply Brief, pp. 10, 27) that "ABC of Communism" (Exhibit 16) is of no evidentiary value since it "never accepted as an authorized version of Communism" and was withdrawn from use in, and barred from, the Party's schools, and its editors were ultimately expelled. But whatever the ultimate disposition of the book, the record shows that it was published by the Party between 1920 and 1924 (cover, title page), was officially circulated by the Party (R. 269), was expressly designed for study class purposes (Exhibit 16, pp. 5–6), and was used in 1924 and 1925 as a text book in the

Concerning "Manifesto of the Communist Party" (Exhibit 7), petitioner insists (reply brief p. 26) that Schneiderman's subscription to its principles was limited to their application to the period in which they were written and the country about which they were written. But petitioner explicitly testified (R. 103) in response to the question whether during the relevant period he believed in and advocated the principles of Marx that he "believed in the essential correctness of the Marx theory as applied by the Communist party of the United States." And it is to be noted that the very document which petitioner insists represents the only program of the Communist Party of the United States of America, and the true interpretation of his principles—the 1938 Constitution of the Party—itself expressly embodies the principles of Marx and Engels and applied them to the "establishment of socialism [communism]" in the United States (R. 15; cf. 898).

4. In response to a question put by Mr. Justice Black, the Solicitor General stated that the District Court made no finding that petitioner, at the time of his naturalization, did not intend to renounce and abjure allegiance and fidelity to any foreign prince, potentate, state, or sovereignty. The response was in error. The District Court did

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Workers Party study classes and in instructing teachers (R. 185, 186, 193, 194, 202). Thus it plainly appears that it was officially accepted and used during the relevant period.

so find (R. 51). We have urged the less specific position (see main brief, pp. 29–45) that through his rigid adherence and unremitting political loyalty to the Communist Party and the Third International, and his complete subjection to the orders and political discipline of those organizations, his fidelity was exhausted and he could have none left for the United States. The evidence relating to petitioner's affirmative allegiance to the Communist Party and the Third International is simply the converse of the evidence (main brief, pp. 45–52) of his lack of allegiance to the United States.

5. Petitioner has strongly emphasized in his oral argument and in his reply brief (p. 24) his contention that Congress did not until 1940 make Communism a bar to naturalization, and had expressly refused to do so. Accordingly, petitioner insists that if this Court were to affirm the judgment of the court below, this Court would be guilty of "judicial legislation." But as was pointed out in our main brief (pp. 121–125), the legislative history clearly does not warrant the conclusion that, by failing to specify Communism as a bar, Congress thereby intended to permit their admission to citizenship. The bills specifying Communism as a disqualification, which did not become law, related only to exclusion and deportation, not to naturalization. And in any event, the very ground of opposition to these bills

was that they "accomplish practically nothing more than can be and is being accomplished under the present law." H. Rep. No. 1023, Pt. 2, p. 2. From the earliest Naturalization Act, Congress has traditionally imposed broad and general requirements; that Congress did not thereby intend to permit naturalization of members of specific groups was established as early as 1795, when Congress made it plain that the requirement of attachment barred such diverse groups as "Aristocrats," "Monarchists," "Anarchists," and "Jacobins"—the latter the forerunners of Communists—although those groups were not specified in the Act. 4 Annals of Cong., 3d Cong., 1793–1795, p. 1021–1022, 1031–1032; see Government's main brief, pp. 108–109, 122–123.

CONCLUSION

Petitioner's contentions raised in his reply brief are without merit. For the reasons stated in the Government's brief and at the oral argument, the judgment below should be affirmed.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

WENDELL BERGE,
Assistant Attorney General.

RICHARD S. SALANT,
Attorney.

U. S. GOVERNMENT PRINTING OFFICE: 1943

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 2

WILLIAM SCHNEIDERMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

There is herewith set out a list of exhibits introduced by the Government in this case, giving the number and name, the date of publication, and the date of circulation in the United States of each exhibit; there are also set out record references showing petitioner's testimony concerning these exhibits.

Scope of tabulation.—The tabulation is confined to documents introduced by the Government. It omits the first five Government exhibits which are as follows: Exhibit 1, Petitioner's Declaration of Intention (R. 72–73); Exhibit 2, Petition for Naturalization (R. 74–78); Exhibit 3, Peti-

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tioner's Certificate of Naturalization (R. 78–79); Exhibit 4, Affidavit of Robert M. Charles (R. 81–84); and Exhibit 5, the Constitution and By-laws of the Communist Party of the United States of America (R. 14–38). In addition, the following exhibits have been omitted: Exhibit 20, letter signed by petitioner dated September 10, 1925 (R. 175); Exhibit 21, letter signed by petitioner dated June 13, 1928 (R. 175–176); Exhibit 22, letter signed by petitioner dated December 18, 1929 (R. 176–177); Exhibit 23, letter signed by petitioner dated January 30, 1930 (R. 178); Exhibit 24, letter signed by petitioner dated January 30, 1930 (R. 179–180); Exhibit 25, letter signed by petitioner dated January 30, 1930 (R. 180);[1] Exhibit 28, card of Minnie Karasick, a witness for petitioner in his naturalization proceedings (R. 316–318); and Exhibit 29, membership book of Minnie Carson in the Young Pioneers (R. 318–319).

Exhibit 6

Programme of the Communist International

This pamphlet was published by the Workers Library Publishers, Inc.,[2] in 1929 (see flyleaf).

[1] The purpose of these exhibits was to show petitioner's official position and activities in several of the communist organizations.

[2] Petitioner testified that this organization had been organized by members of the Party to publish communist literature (R. 99; but cf. R. 830).

The Programme was adopted in 1928 by the World Congress of the Communist International (R. 109–110). At least until 1931 it was used in classes conducted by the Communist Party (R. 205–206; see R. 184). It was widely circulated in Los Angeles by the Communist Party and was sold in Communist Party book shops as official literature (R. 237). Petitioner testified that he had seen the book and that he was "familiar with it in so far as I have read the resolutions and reports of that congress" (R. 103). At a later point he testified that he had read the Programme, that he was familiar with it and that he attended the Congress at which it was adopted (R. 834). He testified that he agreed with its general political (R. 103) or theoretical (R. 108, 882) conclusions (see also R. 862, 898), and that he approved the program in so far as it interprets general Marxism and Lenin theories (R. 108–109).

EXHIBIT 7

Manifesto of the Communist Party, by Karl Marx and Friedrich Engels, edited and annotated by Friedrich Engels, authorized English Translation

This edition of the Manifesto was published by the International Publishers[3] in 1932 (see page opposite preface, p. 3 of exhibit). The pamphlet

[3] The International Publishers was a corporation through which, according to petitioner's testimony, the Party "carried on its work" (R. 99).

was sold over a period of years in communist book stores; in different form it was one of the earliest Communist pamphlets; and was circulated by the Party as part of its official literature (R. 238). In earlier editions, it was used in the educational program of the Party (R. 206). Petitioner testified that he was familiar with this work and "believes" it is one of the authorized publications. He testified that it "is the basis of tactics for Communism, under the Marxism theory. I believe that these general principles of Marxism, particularly as they applied to the period in which they were written and the country about which they were written, are entirely correct." He further testified that he approved of those principles at the time of his naturalization (R. 122–123, see also R. 103), and that he used the Manifesto as Educational Director of the Young Workers' League (R. 88–89). This was from 1922 to about 1925 (R. 86, 88).

EXHIBIT 8

The State and Revolution, by V. I. Ulianov (Nicolai Lenin)

The pamphlet in evidence was published in April 1924 for the Workers Party of America by the Daily Worker Publishing Company (see cover of exhibit).[4] Petitioner testified that this pam-

[4] For facts relating to the creation and functioning of the Daily Worker Publishing Company, see the Government's main brief, pp. 143–144.

phlet was probably used by the Young Workers League classes when he was educational director (R. 89). At a later point he testified that the pamphlet was used, although again he stated that he was not absolutely sure but that it was probably used after 1924 (R. 127, 128). He also testified that it was circulated by the Literature Department of the Communist Party (R. 128). During 1924 and 1925, the book was used by Communist Party classes (R. 94, 89, 206, 207). It was sold by Party book shops in 1927 and until the time of the hearing (R. 238). Between January 15 and August 1, 1925, at least five thousand copies were published (Exhibit 12, p. 157). Petitioner's testimony indicated his familiarity with this document (R. 89, 127–128). He also testified that at the time of his naturalization, he advocated "socialism" as expressed in the writings of Lenin (R. 862, 898, 103).

EXHIBIT 9

"Left-Wing" Communism—An Infantile Disorder, by V. I. Lenin

This revised translation was published in 1934 by the International Publishers (see page opposite table of contents). It was originally published and translated into English in 1920; and several versions of these translations had been published in the United States thereafter, but by 1934, the book had been out of print in this country for some time (see *ibid;* R. 144). Peti-

tioner testified that this work had been circulated by the Communist Party, but that the instant translation was not available until several years after it was written; he also testified that at the time of the hearing, it was used in Communist Party classes (R. 143–144). Other testimony also showed that earlier versions of this work had been used in classes (R. 207) during the period from 1924 to 1927 (R. 182). The work was generally sold and distributed by the Party (R. 239). Petitioner testified that he was familiar with it (R. 143). He also testified that at the time of his naturalization, he advocated "socialism" as expressed in the writings of Lenin (R. 862, 898, 103).

EXHIBIT 10

Programme of the Young Communist International

This pamphlet was published by the Young Communist League of America (title page), apparently shortly after May 1929 (see page 14 of the exhibit). It is the program adopted by the Fifth World Congress of the Young Communist International and confirmed by the Presidium of the Executive Committee of the Communist International on March 13, 1929 (see page 15 of the exhibit). Petitioner testified that the pamphlet was used in the schools of the Young Communist League and was "probably" in general circulation among Communist Party members and in Party

schools (R. 147–148). Other testimony established that the book was used in teaching communist classes (R. 208) and was widely sold in communist book stores (R. 240). Petitioner testified that he was familiar with the Programme but "I don't know if it is exactly this edition" (R. 147); he also testified that he knew the work (R. 150), and that he subscribed to the principles of the Communist Youth organizations (R. 102). He was a member of the Young Workers' League and successor communist youth organizations from 1922 to 1929 or 1930 (R. 87 *et seq.*).

EXHIBIT 11

The Theory and Practice of Leninism, by I. Stalin

This pamphlet was published for the Workers Party of America by the Daily Worker Publishing Company (see cover). It was published either in 1924, when the Daily Worker Publishing Company commenced operations (Exhibit 13, p. 115), or in 1925, when the Workers Party of America changed its name (Exhibit 12, cover, title page, p. 166; cf. R. 9, 93). Petitioner testified that it was "probably" circulated by the Party (R. 159). Other testimony showed that the pamphlet was distributed by Party book stores and among Party members (R. 209, 210, 211), and that it was used in educational classes between 1924 and 1936, apparently in various editions (see R. 184, 194, 201, 209, 222). Between January 15

and August 21, 1925, five thousand copies of this pamphlet were published by the Party (Exhibit 12, p. 157). Petitioner testified that he was "familiar with this work, although I am not familiar with this particular edition" (R. 158; see R. 160). He also testified that he was sure that he had read the work but that he "personally" did not use this edition (R. 159). He did not refer to or offer in evidence the edition with which he was familiar.

EXHIBIT 12

The 4th National Convention—Workers (Communist) Party of America

This pamphlet, which reported the convention of the Party held in Chicago, Illinois, from August 21 to 30, 1925, was published by the Daily Worker Publishing Company (cover). It was sold and circulated by the Party in Los Angeles in 1925 and was the official report of the convention (R. 240–241). It was stated by the Daily Worker Publishing Company to be "absolutely indispensable to any member of the party" (see inside back cover page of the exhibit). While petitioner disclaimed familiarity with the literature of this convention (R. 160), he testified that he had attended the convention (R. 97). He also testified that he was in agreement with the general program and principles of the Workers (Communist) Party (R. 102, 162).

Exhibit 13

The Second Year of the Workers Party of America

This pamphlet comprises the report of the Central Executive Committee to the Third National Convention held in Chicago, Illinois, December 30 to December 31, 1923, and January 1 to January 2, 1924, and includes "theses, programs, and resolutions" (cover). It was published by the Literature Department of the Workers Party of America (cover). The testimony showed that there were a large number of copies of this pamphlet in existence and that it was sold and distributed by Communist Party book stores as the official report of these proceedings (R. 248). Petitioner, however, testified that he was not familiar with the pamphlet or its contents (R. 161) and that he had not attended this convention (R. 97). Later he testified that "I believe this was before my membership in the Party, and did not attend the conventions, and I do not recall" (R. 883). It is to be noted, however, that petitioner was a leader at this time of the Young Workers League (R. 86–88) which in turn was closely related to the Communist International and to the Workers Party of America (see Government's main brief, p. 141), and that he testified that ever since he was sixteen years old he had consistently "subscribed to the principles" of the communist parties and the Communist International (R. 92,

102–103, 108). It is also to be noted that petitioner became a member of the Workers Party of America shortly after this convention; in 1925 he became an officer of the latter Party (R. 92; 175). Thus, in the light of the fact that this exhibit embodied official reports, programs and resolutions of the Party, and of the further fact that petitioner shortly thereafter became a member of the Party, it is submitted that not only his familiarity with the views represented by the work, but his acceptance of such views, may reasonably be inferred (see R. 102).

EXHIBIT 14

Acceptance Speeches, William S. Foster, Candidate for President of the United States, and Benjamin Gitlow, Candidate for Vice-President

This pamphlet embodies the proceedings of the Workers (Communist) Party presidential convention in 1928 and includes the report of the committee on nominations, the acceptance speeches of Foster and Gitlow, and closing remarks on the convention (see cover, table of contents). It was published in 1928 for the National Election Campaign Committee by the Workers Library Publishers in 1928 (see cover, title page). The evidence showed that this pamphlet was widely sold and circulated by the Party in 1928 and

thereafter (R. 254–255). Petitioner testified that he was not familiar with the pamphlet, and that he was not present at the convention (R. 158). At the time of this convention he was in Russia attending the Sixth World Congress of the Communist International (R. 834). Nevertheless, he testified that "generally * * * I was in agreement with" the platform of the communist candidates in 1928 and that he supported those candidates (R. 883); he also testified that he was in agreement with the general program and principles of the Workers (Communist) Party (R. 162). In these circumstances, and in the light of the facts that these speeches were officially and very widely circulated throughout the Party and that it was at about this time that petitioner assumed increasing responsibilities in the Party (see main brief, p. 5), petitioner's familiarity with and general acceptance of the views embodied in this work can reasonably be presumed.

EXHIBIT 15

The Platform of the Class Struggle—National Platform of the Workers (Communist) Party

This work was published for the National Election Campaign Committee of the Workers (Communist) Party by the Workers Library Publishers (cover, title page). It was published in 1928 (see page containing table of contents). The testimony shows that the pamphlet was dis-

tributed by the Party as the official statement of its platform in 1928 (R. 263). Petitioner testified that he was not familiar with the pamphlet and its contents; that it represented the election platform for the presidential election; that he did not attend the convention; that he was not familiar with its decisions; but that he was in agreement with the general program and principles of the Party at that time (R. 161–162, 882–883). He also testified that "generally * * * I was in agreement with" the platform and supported the candidates who ran on the platform (R. 883), and that he agreed with the general program and principles of the Workers (Communist) Party (R. 162).

EXHIBIT 16

ABC of Communism, Bucharin and Preobraschensky (Vol. I)

This pamphlet was published by the Literature Department of the Workers Party of America (cover). It was written in 1919 and was translated into English in June 1921 (p. 7 of exhibit). Petitioner testified that it was issued between 1920 and 1924 (R. 163), but that he did not know whether it was used by the Party, that it had never been accepted as an authorized version, and that it had subsequently been barred from use and its authors expelled from the Communist International (R. 163–164, 834). Other testimony,

however, emphasized the importance of this pamphlet during petitioner's probationary period. Thus, the evidence showed that this pamphlet was a basic work of Party study classes in 1924 and 1925 (R. 185, 193–194, 202); that it was expressly designed for such purposes (Exhibit 16, pp. 5–6); that it was officially circulated by the Party (R. 269); and that it was still advertised by the Workers Library Publishers in 1928 (Exhibits 14 and 15, inside back cover page). Petitioner testified that he was familiar with the work (R. 163) and that he had read it (R. 834).

EXHIBIT 17

The International of Youth

This pamphlet was the organ of the executive committee of the Young Communist International (cover) and was published by the Young Communist International in London (title page). It was a quarterly magazine published before 1925 (R. 164) and was sold and circulated by Party book stores as an official magazine of the Young Communist Party (R. 270). Petitioner denied that it was an officail publication of the Communist Party (R. 835) and, although he testified that he had read some issues of the magazine, he could not vouch for having read this particular issue (R. 164). At a later point he testified that he had "no doubt that I have read it, although I must

have been 15 or 16 years old when I read it, and I would not recall everything in it" (R. 835).[5]

EXHIBIT 18

Why Communism? Plain Talks on Vital Problems, by M. J. Olgin

This pamphlet was published by the Workers Library Publishers (title page; R. 835). Its first edition was dated 1933, and the second revised edition, in evidence, is dated 1935 (p. 2 of exhibit). Petitioner testified that the pamphlet was circulated by the Party (R. 165). Other testimony showed that it was widely used in educational classes and that many thousands of copies were distributed through Party book stores (R. 221). It had been printed in several forms and was one of the most extensively distributed of the communist pamphlets (R. 272–273, 835). Petitioner testified that it was published while he was out of the country and that he did not recall having read it; he also testified, however, that he had heard of the pamphlet and had read about it, but that he did not believe that he had read it (R. 165).

EXHIBIT 19

New Frontiers for the Pioneers of 1937

This work was a yearbook, published in 1937, of the California Young Communist League (cover,

[5] This magazine is of minor importance and has not been referred to in the Government's brief. Only a short excerpt from it appears in the record (see R. 270, 271–272).

title page). It was distributed by the Young Communist League as one of its series of official yearbooks (R. 273). Petitioner testified that he was not familiar with it (R. 175). The exhibit is of minor importance, and was introduced solely to show that petitioner had been a leader of communist youth organizations (see pp. 7 and 26 of the exhibit; R. 273).

EXHIBIT 26

Statutes, Theses and Conditions of Admission to the Communist International, adopted by the Second Congress of the Communist International, July 17 to August 7, 1920 [6]

This pamphlet was published in March 1923 and was issued under the auspices of the Workers Party of America (see inside front cover). The particular pamphlet in evidence was taken in a raid in 1928 (R. 274). The testimony indicated that though the pamphlet was never widely circulated, it was often found in the possession of Party leaders (R. 274). Petitioner testified that he had no recollection of the particular edition in evidence and did not know of the Party's publishing it (R. 836). He also testified that "I have no

[6] Petitioner has raised some question whether this exhibit was admitted in evidence. The question is discussed fully in the Government's Reply Brief at pp. 6 and 7, where it is pointed out that the parties themselves treated the exhibit as in evidence. It is to be noted that petitioner's own counsel at the hearing twice expressly referred to the exhibit as having been put in evidence (R. 835–837, 856).

doubt that possibly a pamphlet" like it was sold in Party stores (R. 836). While petitioner insisted that the American Party Communist organizations were expressly exempt from the requirements embodied in this pamphlet and in Exhibit 6 (R. 380), the evidence clearly indicates the contrary. Thus it is stated in the exhibit itself that it is issued under the auspices of the Workers Party of America, which "declares it is in sympathy with the principles of the Communist International and enters the struggle against American capitalism, the most powerful of the capitalist groups, under the inspiration and leadership of the Communist International" (see inside front cover). Some of the policies (Exhibit 12, pp. 137–138) of this pamphlet were expressly adopted by the Party in 1925.[7] We have discussed in detail at pages 39, 40–44 of our main brief, petitioner's contention that the Party was not bound by the principles of this work. We submit that the evidence there analysed establishes that in fact and in practice the Party was subject to the International's admission requirements. As we have stated in our main brief, the record is barren of a single statement, documentary or otherwise, or any other indication, during the period relevant to this case

[7] For other express reference of official action taken by the Party in accordance with directions and orders of the Communist International, see especially the 4th National Convention, Ex. 12, pp. 10, 19, 26, 41, 63–64, 65, 70, 72.

or before 1938, relieving the Party of the admission requirements which on their face are so clearly applicable and applied.

Exhibit 27

Program and Constitution—Workers Party of America

This pamphlet embodies the program and constitution of the Workers Party adopted at National Convention, New York City, December 24 to 27, 1921, and amended at National Convention December 30 to 31, 1923, and January 1, 1924 (cover; see Exhibit 13, pp. 73–86).[8] The pamphlet was published by the Literature Department of the Workers Party of America (cover) and was supplied to persons joining the Party (R. 275). It was circulated in 1924 and 1925 or 1926 (R. 275). More than half a million copies were distributed (Exhibit 13, p. 27). Petitioner testified that he was not personally familiar with this pamphlet and that it was "probably" one of the drafts presented to a convention (R. 836–837, 861). He also testified that he subscribed to the principles of the Workers Party (R. 102). The same reasons which support the conclusion that petitioner was familiar with the views embodied in this work and accepted such views, apply in respect of this pamphlet as we have shown to

[8] *The Second Year of the Workers Party of America* (Exhibit 13; see *supra*, pp. 9–10) embodies the same program (at pp. 73–86).

apply in respect to Exhibit 13, *supra,* p. 10. This was the program and constitution of the Party he joined, of which he was an officer, and with the principles of which he agreed. (R. 91, 92, 93, 94, 102. See R. 862.)

Comments:

In addition to the evidence, just set out, specifically directed to the particular exhibits, other general evidence has an important bearing upon the probative value of these exhibits as evidence of the principles of the Communist Party and of petitioner's own views. This general evidence concerns the method of preparing the literature, the method of its publication, the method of its distribution, the general relationship of individual members of the Communist Party to the Party itself, and petitioner's role in the Party.

The evidence establishes the propriety of utilizing this method of determining the Party's and petitioner's principles. The record shows the existence of a number of factors which together establish that communist literature has characteristics which sharply distinguish it from ordinary political literature. These factors establish that the documents here involved are not vagrant expressions of individuals left freely to express themselves.

Thus, as we have described more fully at pages 142 to 145 of our main brief, a basic precept of

communist tactics was systematic propagandization through publication and distribution of communist literature. This literature was issued through publishing agencies of the Communist Party and, as such, bore the Party's official imprint since those publishing agencies were subject to the rigid supervision of the Party. All of the literature which we have listed above was published by official communist agencies (see pp. 143–145 of our main brief). In addition, the evidence establishes that the Party distributed and circulated its own literature, maintained its own book stores, and conducted speakers bureaus, study classes, and forums, in which the literature was utilized (main brief, p. 145). Some of the literature was not only officially published, but comprised official constitutions, official programs, and official reports (main brief, pp. 145–149).

A second major characteristic is the specific and rigorous control to which both the author and the content of the literature were subjected by the Communist Party (see main brief, pp. 24–27, 142–145). Thus the Party press was under the centralized ownership of the Party (Exhibit 13, pp. 42–44; Exhibit 12, p. 78). All party periodicals were required to be edited by loyal Communists; the propaganda was required to correspond with the programs and decisions of the Third International; and all periodicals were to be made subject to the Presidium of the Party (Exhibit 26, p. 27). The record shows that one editor was

removed by the Party and replaced by a member who "understands, accepts, and fights for the Communist line of our Party and the Communist International" (Exhibit 12, p. 145); another Communist was expelled from the Party upon charges, among others, that he had failed to comply with the instructions of the Party (Exhibit 12, p. 97). Literature which did not conform to Party principles was barred from Party schools and classes (R. 163–164, 834).

It is against these fundamental characteristics that petitioner's later and occasional disavowal of some of the literature must be measured. A basic phenomenon of the communist organizations was the rigorous requirement imposed upon all members of undeviating adherence to its principles (see main brief, pp. 29–45). The weeding out and expulsion of dissidents was a first principle of the Party (Exhibit 26, pp. 21–22; Exhibit 13, p. 128; Exhibit 12, pp. 24–25, 93–96; see R. 240). It must be recalled that petitioner, an intelligent man and an intellectual revolutionary, was in a position in which it can fairly be inferred that he was aware of, and accepted, this literature. He repeatedly testified to his general agreement with the principles of Communism and the various communist organizations (R. 92, 102–103, 108, 123, 862, 898). He was a leader of the Party and attended many of its conventions; he was educational organizer and organization director; and later he was frequently a communist candidate for public office.

In these circumstances the literature which we have seen the Party took careful steps to edit, publish, and distribute represents the views to which he adhered. No single act, association, spoken or written word was brought forward to show that from 1922 to 1927, or for years thereafter, the principles of the Party were to the slightest degree inconsistent with his own. The Party's strict discipline and his own subscription to communist principles brings those principles to him. The record is entirely barren of any contemporaneous disavowals by petitioner; on the contrary, his steady rise in the councils of the Party and his admitted acceptance of the principles of Communism can scarcely be squared with any contention of disagreement with the Party principles. Thus, at most, his testimony at the hearing that he was not familiar with some of the literature introduced by the Government raises an issue of credibility and that a very limited one. There was enough to show what he believed even if he were unfamiliar with some of the literature. We submit that there is no warrant for holding, contrary to the findings of the courts below that the petitioner did not accept the Party principles.

Respectfully submitted.

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Solicitor General.
RICHARD S. SALANT,
Attorney.

MARCH 1943.

U. S. GOVERNMENT PRINTING OFFICE 1943

FILE COPY

SEP 30

Supreme Court of the United States

OCTOBER TERM, 1941.

No. ~~311~~ 2

WILLIAM SCHNEIDERMAN,

Petitioner,

against

THE UNITED STATES OF AMERICA.

BRIEF AMICUS CURIAE OF THE AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PEARL M. HART,
Attorney for American Committee
for Protection of Foreign Born.

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 311

WILLIAM SCHNEIDERMAN,

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After petitioner had been a naturalized citizen for thirteen years, his citizenship was cancelled. The grounds for such cancellation were that the oath of attachment to the constitution taken by the petitioner at the age of 21 was false; that for the preceding five-year period he had not conducted himself as a person entitled to naturalization; that he had imposed upon the court in failing to reveal his membership in a political party. The sole evidence to support these contentions was the petitioner's membership in the Communist Party of the United States or its predecessor organizations. Despite the fact that the naturalization law did not make such membership a ground for denial of citizenship, and consequently the naturalization court asked the petitioner no question concerning such

membership, despite the fact that petitioner had resided lawfully in the United States since the age of three and had an unblemished record as a law-abiding citizen, thirty-one years after he had come here his citizenship was forfeited. This was done because in the cancellation proceedings the court assumed the right to review the judgment of the original naturalization court interpreting the ideology of a political party and imputing such interpretation to the petitioner retroactively despite his positive testimony to the contrary, and despite substantial evidence in the record that there were Party commentators and independent competent students and analysts of economic theory who supported petitioner's interpretation.

In effect, though not in form, the Court's decision amounts to judicial legislation. Lacking the statutory power to take away a person's citizenship because he is a member of a certain political party, the Court has reached the same result by assuming that petitioner must years before have held objectionable views solely because he was a member of that party. The situation is so fraught with danger that only the most exacting proof would justify the result arrived at below. That proof the record does not furnish.

Especially, since serious constitutional and social questions are involved, it is no answer in this Court for the Government to say that there is some evidence to support the findings below.

> *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 7-8;
> *South Carolina State Highway Department* v. *Barnwell Brothers, et al.*, 303 U. S. 177, 191-2;
> *City and County of San Francisco* v. *Market Street Railway Co.*, 98 F. (2d) 628, 634—C. C. A. 9 (1938), certiorari denied 305 U. S. 657.

Actually, that is not the case. There is an essential link in the evidence that is wholly missing. When certain writ-

ings may indicate that a party sponsors an objectionable doctrine and the writings of other party leaders and nonpartisan commentators state that it does not, there is hardly sufficient basis for a court to find that even the *political party* holds the objectionable tenet. But without more,—and nothing more is shown in this case,—there is completely lacking any evidence that would charge an *individual member* with the undesirable views.

Serious social implications are involved in what the Government would dismiss as a mere question of evidence. If, instead of the requirement that vested rights can be destroyed only on clear and convincing evidence, missing links may be supplied, as they were below, then this Court will have sanctioned an indirect method of penalizing membership, otherwise legal, in a political party.

If the decision below is not reversed the safeguards—designed to insure that citizenship acquired by naturalization will not be given unfairly "an unstable status" (Woolsey, J., *United States* v. *Marini*, 16 F. Supp. 963, 965),—will be swept away. No right or privilege obtained by virtue of an oath of allegiance, whether in naturalization proceedings or otherwise, would be secure. Any such right or privilege could be forfeited at any indefinite time in the future if the Government should decide that a person, because of attributed political, social, or economic beliefs could not sincerely have taken the oath of allegiance. Such a conclusion cannot be squared with traditional guaranties of security of opinion. Thousands of government and other licensed employees, thousands of naturalized citizens would be rendered insecure because they would be subjected to the limitless power of a tribunal holding different views.

Respectfully submitted,

PEARL M. HART,
Attorney for American Committee
for Protection of Foreign Born.

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FEB 27 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

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OCTOBER TERM, 1941.

No. 311. 2

WILLIAM SCHNEIDERMAN,

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UNITED STATES OF AMERICA.

BRIEF FOR AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN AMICUS CURIAE

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Counsel for American Committee for
Protection of Foreign Born
Amicus Curiae

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IN THE

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WILLIAM SCHNEIDERMAN,

Petitioner,

against

UNITED STATES OF AMERICA.

BRIEF FOR AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN AMICUS CURIAE

This brief is filed on behalf of the American Committee for Protection of Foreign Born. The members of this Committee and associates—organizations of the foreign born, trade unions, church, social welfare, civil liberty and civic organizations throughout the country—recognize the necessity, never greater than at this time, of insuring the equal rights in fact as well as in law[1] of all American citizens, whether native or naturalized.

---

[1] "Except for eligibility to the Presidency, naturalized citizens stand on the same footing as do native born citizens" (*United States* v. *Schwimmer*, 279 U. S. 644, 649).

The decision below is a grave threat to the principle of equality of American citizens. If it stands, naturalized citizens become a separate class with a provisional, unstable citizenship, in violation of the principles of the Constitution and of all American traditions.

I. Opinions below

The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported at 119 F. (2d) 500 (R. 908); the opinion of the District Court at 33 F. Supp. 510 (R. 39).

II. Jurisdiction

1. The statutory provision is Judicial Code, §240(a), 28 U. S. C. §347, as amended by the Act of February 13, 1925, Chap. 229, §1, 43 Stat. 938.

2. The petition for certiorari was filed July 26, 1941 and granted October 13, 1941 (R. 922).

III. The Statute

The proceeding was brought under the Act of June 29, 1906, Sec. 15, 8 U. S. C. §405, which provides for instituting proceedings "for the purpose of setting aside and cancelling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured"[2].

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[2]For the full section, see Appendix II pp. 48-9. In Appendix I pp. 22-47 are printed material portions of a pamphlet published by the Government, entitled "Naturalization Laws and Regulations, June 15, 1924". This publication contained the laws and regulations in force in 1927, at the time Petitioner was naturalized.

IV. Statement

The judgment of cancellation rests on the District Court's conclusion in 1940 that because of Petitioner's membership in the Communist party in 1927 when he was naturalized he must then have held views which unfitted him to be an American citizen.

There is no contention that Petitioner did not have the residential or other technical qualifications for citizenship; no claim that all statements required by the statutory forms of petition were not supplied; or that any questions asked by the Court were answered untruthfully. There was no attack upon his moral character. On the contrary, his behavior was impeccable. The evidence established that he lived a thoroughly reputable life (R. 357); had never been convicted of any crime (R. 360), or been in any conflict with the authorities (R. 343, 833). There was no suggestion that he ever advocated or was guilty of any sabotage or any subversive activities.

The political beliefs upon which the cancellation was based were imputed beliefs. Petitioner denied that they were his views or the views of his party (Petitioner's brief, pp. 33-4). The Government refers to Petitioner's activities "in various official capacities of increasing importance and responsibility in the Communist Party organizations" (Certiorari brief, p. 4), but it cites no acts of his, no statement, no advocacy of any doctrine.

V. Argument

Implicit in the decision below are the following dangerous and unsound principles:

1. The Court laid down a rule of naturalization which Congress not only did not adopt but refused to adopt.

2. The Court assumed the power to substitute its views without limitation in time, for those of the Naturalization Court.

3. The Court purported to come within the framework of the cancellation statute by finding fraud when there was no fraud; concealment when there was no concealment; illegality, by which it meant it could substitute its judgment as to Petitioner's fitness for citizenship and his qualification to take the naturalization oath for that of the Naturalization Court.

4. The disqualifying beliefs were ascribed to Petitioner not on the basis of anything he said, wrote or did. The beliefs were imputed to Petitioner solely because he was a member of the Communist Party, and because the Court, in the face of sharply conflicting views as to what the Party's doctrine was and of Petitioner's uncontradicted evidence as to what he thought it was, attributed to the Petitioner one rather than another interpretation of the Party doctrine. In so doing, the Court ignored the principles of law applicable to freedom of beliefs and the destruction of vested rights.

FIRST

No power was vested in the Court to adopt a rule of naturalization not prescribed by Congress or to substitute its views on fitness for citizenship for those of the Naturalization Court.

I.

Congress, in whom alone is vested the power to "establish a uniform rule of naturalization" (Constitution, §8, Subd. 4), did not proscribe membership in the Communist Party[3]. On the contrary, bills making membership in the

[3]"Nothing in our Constitution or our laws forbids the formation of such a party [the Communist Party], or persons from joining them" (*Strecker* v. *Kessler*, 95 F. [2d] 976, 978, affirmed with modification, 307 U. S. 22).

Communist Party ground for *deportation* or *exclusion* were introduced in Congress and even reported out of Committee[4], but they were not enacted.

Congress did not provide that the holding of the abstract beliefs which have here been attributed to the Petitioner rendered a person unfit for citizenship. Congress had made a legislative judgment as to the effect of certain beliefs or affiliations upon a man's qualifications for citizenship. Thus, an applicant for citizenship was required to show that he was (a) "not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government"[5], or (b) not a "polygamist nor a believer in the practice of polygamy".

But in 1927 there was no reference in the Naturalization Statute or in the regulations or in the prescribed forms of application or declaration (Appendix I pp. 22-47) to the Communist Party or to beliefs in the overthrow of the government by force and violence, or to any other political or economic beliefs[6].

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[4]H. R. 12044 (72d Cong., 1st sess.) passed House; reported by Senate Committee on Immigration on June 11, 1932. H. R. 7120 (74th Cong., 1st sess.) reported out of the House Committee on Immigration and Naturalization on May 27, 1935. Nothing further happened to either bill.

[5]As interpreted by the government in the regulations (Appendix, p. 46) and by Congress in the statutory form of Declaration of Intention (Appendix, p. 31), this required Petitioner to show that he is not an anarchist.

Though some of the findings imply that Petitioner disbelieved in organized government, there is no evidence to support these findings. The courts below do not refer to them in their opinion, nor does the Government in its brief on certiorari (See Petitioner's brief, p. 34).

[6]There was not then as there is now a provision preventing the naturalization of a person "who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society or group that believes in, advises, advocates, or teaches * * * the overthrow by force or violence of the Government of the United States or of all forms of law". That was added by Act of October 14, 1940 (8 U. S. C. 705, Appendix II p. 47).

II.

A man appearing before the Naturalization Court in 1927 had to establish the jurisdictional requirements of residence and the like, produce witnesses who would swear to his good moral character and his attachment to the principles of the Constitution, and "show to the satisfaction of the Court" that during his residence in this country "he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same" (Act of June 29, 1906, §4; 34 Stat. 598; Appendix, p. 22).

Abstract political, religious or economic views,—apart from anarchy and polygamy,—if relevant at all, were relevant only like any other facts to enable the Naturalization Court to form a conclusion as to the person's fitness. To that end the Court was empowered to examine and did examine the applicant. To that end, the Statute provided for a period of investigation between the filing of the application and the hearing[7].

The Court was entitled to examine the applicant and his witnesses. When the Court had been satisfied as to the character of the applicant, it permitted him to take the oath. The fact that the oath was administered raises, without further proof, the presumption that the Court "before whom the oath was taken, was satisfied as to the character of the applicant" (*Campbell* v. *Gordon*, 6 Cr. 176, 182).

If the Court's decision was deemed erroneous by the applicant or the Government, there was a right to review that decision on appeal (*Tutun* v. *United States*, 270 U. S. 568), but when the Court has entered its judgment granting citizenship, that judgment is final. Unless an appeal is taken, no court is authorized at a later date to sub-

[7] *United States* v. *Ness*, 245 U. S. 319, 323.

stitute its judgment for the decision of the Naturalization Court as to an applicant's fitness, beliefs or behavior.

The judgment is, to be sure, subject to cancellation for fraud or illegality. The statute (*supra*, p. 2) authorizing such cancellation is not a substitute for appeal[8].

The Court purported to base its decision on fraud and illegality. Actually, what it did was to substitute its own judgment for that of the Naturalization Court as to the applicant's fitness for citizenship and his capacity to take the oath[9].

SECOND

Fraud may not be asserted where there is no misrepresentation and no concealment. Illegality is not established because the Court differs with the Naturalization Court's conclusion as to the fitness of the applicant for citizenship.

Solely because of the political beliefs which the Court attributed to the Petitioner, it found that Petitioner's naturalization was (1) fraudulently procured in that Petitioner concealed from the Naturalization Court that he was a member of the Communist Party (6th Finding, R.

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[8]*Tutun* v. *United States* (*supra*), 270 U. S. 579: "It is also argued that Congress manifested the intention of denying the usual method of appellate review by providing in §15 for a bill in equity to cancel certificates of citizenship. *The remedy afforded to the Government by §15 is narrower in scope than the review commonly afforded by appellate courts.* Moreover, there is no corresponding provision which would afford to the applicant for citizenship an independent remedy for correcting errors committed in the district court" (italics supplied).

[9]Compare *Federal Trade Commission* v. *Algoma Co.*, 291 U. S. 67, at p. 73: "'The findings of the Commission as to facts, if supported by testimony, shall be conclusive.' 15 U. S. C. §45. The Court of Appeals, though professing adherence to this mandate, honored it, we think, with lip service only. In form the Court determined that the finding of unfair competition had no support whatever. In fact what the court did was to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences."

50); (2) fraudulently and illegally procured in that Petitioner's oath that he would support the Constitution and that he renounced allegiance to foreign sovereignties was a false oath (7th Finding, R. 51); (3) illegally procured in that Petitioner was not and had not within five years preceding the filing of his application behaved as a perso attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same (4th Finding, R. 48).

1. The Concealment Finding

The form of the petition is set out *in extenso* in the statute[10]. This form Petitioner followed. It did not require him to mention his association with the Communist Party or any political beliefs except those already referred to. There was no room in the petition for any such disclosures. The regulations provided that these forms be followed (Appendix, p. 37). They even prescribed the changes to be made in cases (not here applicable) where there were special circumstances, such as married women, widows, soldiers, Indians (Appendix, pp. 39-42).

In the absence of a showing of any omission[11] or of a showing that an applicant has failed to answer truthfully any questions asked of him,—there can be no basis for the charge that the Court was in any way imposed upon.

Any other theory would place upon an applicant for citizenship the burden for determining, at his peril, what beliefs at some future date before a different judge might be deemed material and obnoxious. An applicant for citizenship is not subjected to the impossible hazard of an-

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[10] §27 of the Act, Appendix, p. 29.

[11] Petitioner swore that he answered the questions asked of him "fully, freely and honestly" and "without any reservation" (R. 361). There is no evidence that he did not.

ticipating the kind of things that some person may at a later date find not in conformity with his views of what is within the American tradition when such information is not required by the statute or the regulations[12].

If it were conceivable that under any circumstances an applicant could at the risk of a later penalty be required to insist upon inserting in his naturalization record information that was not required by the statutory form of the petition or the regulations of the department, there is no possible basis for the conclusion that the omission was willful or fraudulent. For Petitioner could have read the pamphlet containing the law and regulations (Appendix, p. 22) from cover to cover and would not have found any indication anywhere that in a naturalization proceeding the department was interested either in the Communist Party or in the applicant's ideas pertaining to the overthrow of the Government by force and violence[13].

Nor was the situation changed so far as Petitioner was concerned by the fact that there was in effect in 1927 the Act of October 16, 1918 as amended by the Act of June 5,

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[12]Compare *Herndon* v. *Lowry*, 301 U. S. 242. Herndon was convicted under a Georgia statute. The statute, as construed by the Georgia Court, supported Herndon's conviction "if the jury thought he [*Herndon*] reasonably might foretell that those he persuaded to join the party might, at some time in the indefinite future, resort to forcible resistance of government" (301 U. S. 262-3). The Court thought that "the question thus proposed to a jury involves pure speculation as to future trends of thought and action." "The statute, as construed and applied, amounts merely to a dragnet which may enmesh anyone who agitates for a change of government if a jury can be persuaded that he ought to have foreseen his words would have some effect in the future conduct of others."

[13]At the time Petitioner was examined in the Naturalization Court in California, radical views had received considerable publicity in that state. Two cases under the California Syndicalism Act had been decided on May 16, 1927, less than a month before Petitioner appeared in Court in his naturalization proceeding—the case of *Anita Whitney*, 274 U. S. 357 and the case of *William Burns* (id.) 328. The Naturalization Court, to the extent that it deemed Petitioner's political views relevant, was at liberty to examine him about them.

1920 (8 U. S. C. §137), relating to exclusion and deportation of aliens. Congress did not see fit to import their provisions into a naturalization statute, nor did the naturalization service deem them material for inclusion into its regulations. Petitioner cannot be held to a superior knowledge of wisdom,—at the risk of a later finding of fraudulent concealment.

2. The False Oath Finding

Petitioner swore to support the Constitution and to renounce allegiance to any foreign prince, potentate, state or sovereignty and to support and defend the Constitution against all enemies, foreign and domestic. The oath was false, the District Court found (R. 51), because Petitioner did not intend to renounce his allegiance, but, on the contrary, to maintain allegiance to the Union of Soviet Socialist Republics and to the Third International. He did not intend to support the Constitution but intended to support the teachings of the Third International, which the Court found are opposed to the principles of the Constitution and advocated the overthrow of the Government and laws of the United States by force and violence (R. 51-2).

Implicit in the finding is the assumption that when a man takes an oath to support the Constitution, he must have no political beliefs which a Court may at any time in the future think inconsistent with that oath. Tl assumption that a court may impose what is in the nature of an *ex post facto* test oath merits emphatic condemnation.

(a) An oath is not a representation that a man has no political or economic beliefs that may not be obnoxious to someone then or thereafter. It is not a representation at all. It is prospective or promissory (*Ex parte Garland*, 4 Wall. 333, 376). At most it is a solemn ceremony tending to bind a man's conscience,—the affiant's avowal that

he finds nothing in his conscience[14] conflicting with his undertaking to support the Constitution[15].

The oath imposes neither upon the Court nor upon anyone else. The applicant must show in his testimony that he is able to bear the responsibilities of citizenship. The Court will not permit an applicant to take the oath until it is satisfied that he has the qualifications. If the applicant misleads the court by any misrepresentation or any fraudulent concealment into believing that he has the qualifications, that would be a ground for cancellation. But it is not the oath, it is the misrepresentation or other fraudulent deception which warrants the setting aside of the citizenship.

(b) Even the power of legislatures to use the mechanism of an oath to work a disqualification or a forfeiture is severely restricted[16]. Certainly, in the absence of express congressional authority, there is no power vested in a court to create, after the event, a disqualification or to set aside a vested right on the ground that it finds political or social

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[14]"We find here that curious insistence which crops up every once in a while, that a man is incapable of taking an oath unless it means to him exactly what some person in authority thinks the oath ought to mean. The very essence of an oath is that it comes from the heart of the swearer, and not from outside himself" (Chafee, *Free Speech in the United States* [1941] p. 373).

[15]It is noteworthy that attachment to the principles of the Constitution was not made a part of the oath. In the congressional debate on the provision, Madison had pointed out: "It was hard to make a man swear that he preferred the Constitution of the United States, or to give any general opinion, because he may, in his own private judgment, think Monarchy or Aristocracy better, and yet be honestly determined to support this Government as he finds it." Annals of Third Congress (Gales & Seaton, 1849) 1022-3.

[16]*Cummings* v. *Missouri*, 4 Wall. 277, 323, 329. "It cannot be denied, for example, that the religious test oath or that the restrictions upon assembly then prevalent in England would have been regarded as measures which the Constitution prohibited the American Congress from passing" (*Bridges* v. *State of California*, 86 L. ed. [Adv.] 149).

views once held by an affiant inconsistent with an intention to support the Constitution.

The dangers of the decision below are not limited to naturalized citizens. Millions of native Amercians take the oath to support the Constitution,—notaries public, lawyers, legislators, public servants. If the doctrine of this case were permitted to stand, a professional status or position would be defeasible,—subject to a potential adjudication that a man years before, had held views that may later seem to an official inconsistent with the Constitution.

The doctrine is especially vicious when applied to naturalized citizens, for, as to them, it permits the Court, without limitation in time[17], to set aside vested rights,—to deprive a man of the inestimable privileges of American citizenship[18] because the court disapproves the political views which the citizen once held[19].

(c) The dangers of the doctrine are thrown in high relief by reference to the facts of this case. The ease with which a man's life may be uprooted for beliefs which a court may think were obnoxious is demonstrated by the less than lip service which the Court gave to the legal requirements for cancelling a judgment. A grant of citizenship may in legal theory be upset only on proof "clear, unequivocal and convincing" (*infra*, pp. 17-18). A vicious purpose or intention will not be deduced when a legitimate one is at least as probable. Contrast these settled principles with the record facts.

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[17]In this case it happened to be thirteen years but it might have been fifty. On the other hand, a criminal prosecution for knowingly procuring "naturalization in violation of the provisions of" the Naturalization Law—a proceeding which may result in a fine, inprisonment and *the voiding of citizenship*,—had to be brought within five years (Appendix, pp. 28-9).

[18]To deport one who claims to be a citizen deprives him of liberty and may result also in loss of both property and life, and of all that makes life worth living (Mr. Justice Brandeis in *Ng Fung Ho* v. *White*, 259 U. S. 276, 284).

[19]Compare *Cummings* v. *Missouri*, 4 Wall. 277, 323, 329.

Oath to Support the Constitution

There was no evidence of any acts or words inconsistent with the oath. The affirmative evidence is all the other way (Petitioner's brief, pp. 33-4). All that the court can proffer in support of the finding is its assumption that a man may not take an oath to support the Constitution if he has political beliefs which the Court thinks are inconsistent with the Constitution. There is no basis for the assumption that a man who believes that there must be substantial change cannot conscientiously take the oath to support the Constitution[20]. As we have seen (*supra*, p. 11), the draftsman excluded from the oath any averment that a man was attached to the principles of the Constitution.

Allegiance to Russia

Except for the Court's idea that notions of change are inconsistent with allegiance to the United States, there is no possible support for the Court's conclusion that petitioner did not intend to renounce his allegiance to Russia.

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[20]The Court could not "follow the government in its contention that belief by an alien that changes should be made in the form of our government indicates lack of attachment to the principles of our Constitution" (*United States* v. *Rovin*, 12 F. [2d] 942, 944-5).

Neither could Mr. Justice Holmes. He thought it "cannot show lack of attachment to the principles of the Constitution that she [Mme. Schwimmer] thinks that it can be improved. I suppose that most intelligent people think that it might be" (Dissenting opinion, 279 U. S. 644, 654). And in his famous dissent in the *Abrams* case, Justice Holmes said: "Congress certainly cannot forbid all effort to change the mind of the country" (250 U. S. 616, p. 628).

"Can they (our Constitutional laws) have been made unchangeable? Can one generation bind another, and all others, in succession, forever? I think not. The creator made the earth for the living, not the dead. Rights and powers can only belong to persons, not to things * * * the dead are not even things. A generation may bind itself as long as its majority is in place, holds all the rights and powers their predecessors once held, and may change their laws and institutions to suit themselves. * * * Nothing then is unchangeable but the inherent and inalienable rights of men" (Thomas Jefferson, *Democracy*, ed. by S. K. Padoven, p. 104; and see *supra*, p. 11, footnote 15).

Petitioner testified that he would fight for this country in a quarrel with Russia (R. 886-7). He was a boy of three when he left Russia (R. 74-5). When he became a citizen at the age of twenty-one, he had lived all of his years of understanding in the United States (R. 75). He never visited Russia after his departure until seven years after he became a citizen (R. 95).

Allegiance to the Third International

What has been said as to allegiance to Russia applies here *a fortiori*. The Third International is no prince, potentate, state or sovereignty and Petitioner was never a citizen or subject of the Third International[21].

3. The Behavior Finding

The Court found (R. 49) that Petitioner "had not behaved as a man attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same" but was a member of the Communist Party, "the principles of which were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence, and taught disbelief in and opposition to organized government" (R. 49).

Implicit in this finding as in the finding relating to the false oath are the Court's assumptions that it has the right to conduct a trial *de novo;* that it may rejudge, twelve years afterwards, whether the statement of a witness that the Petitioner was a person of good moral character was sound.

[21]With equal force might it be argued that an applicant intended to maintain allegiance to and to support principles of the Catholic Church, International Rotary, the League of Nations or any other International organization in the tenets of which he was deeply interested.

A court, on these assumptions, instead of applying the strict rules relating to cancellation (*infra*, p. 18) is vested with powers greater than those of an appellate court,—indeed it has all the powers of the Naturalization Court but is free from the limitation of deciding on the basis of conditions existing at the time of naturalization.

(a) The question for the Naturalization Court is to determine whether during a man's residence in this country, which must have been at least five years, "he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same". Assuming that abstract beliefs enter into the consideration of behavior, although they are not accompanied by overt acts[22]—the relevancy of those beliefs in reaching a conclusion as to a man's moral character and his attachment to the principles of the Constitution, is a matter peculiarly for the Naturalization Court. The proof was required to be made "to the satisfaction of *that* Court" (Appendix, p. 25).

(b) The power to review the Naturalization Court is a limited power of appeal (*supra*, p. 7). Beyond that there is no review of the Naturalization Court's conclusion as to a man's fitness. For when that Court has ex-

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[22]"Behavior" is defined by the Oxford Dictionary (Murray Ed., Vol. 1, Part II, p. 772) as the "manner of conducting oneself in the external relations of life; demeanor, deportment, bearing, manners." The Century Dictionary (1911 Ed., p. 508), in discriminating "behavior" from "conduct", states: "Behavior is the most general expression of one's mode of acting: it also refers particularly to comparatively conspicuous actions and conduct. Conduct is more applicable to actions viewed as connected into a course of life, especially to actions considered with reference to morality."

". . . it is of the essence of the institutions of liberty that it be recognized that guilt is personal and cannot be attributed to the holding of opinion or to mere intent in the absence of overt acts" . . . (Memorial of Charles E. Hughes, and others to the New York Assembly, January 21, 1920, in the case of the expulsion of assemblymen for membership in the Socialist Party, p. 5).

plored the facts relating to an applicant's moral character and his attachment to the principles of the Constitution, and has reached a conclusion, that opinion is expressed in the Court's judgment. It is a judgment as to which reasonable right-minded men may, and have, differed[23].

For even at the same period of time different things seem significant to different men[24], and ideas that on one occasion might be considered innocuous might have an obnoxious connotation at a later time[25].

At different periods in our history, different questions have aroused passionate controversy[26]. The country's reversals on the question of prohibition, the shifts of large numbers of American people on such issues as isolationism,

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[23]Compare the conflicts of opinion in *United States* v. *Macintosh*, 283 U. S. 605, and in the *Gitlow*, *Pierce*, *Abrams* and *Herndon* cases.

[24]Brandeis, J., in the dissenting opinion of *Pierce* v. *United States*, 252 U. S. 239, 267.

What is "un-American" is itself subject to a great difference of opinion. Thus the following organizations have been listed as "un-American" by Congressman Thorkelson of Montana; the Survey Associates; the American Civil Liberties Union; the cooperative movement; the Committee for Industrial Organization; the Washington Friends of Spanish Democracy, with Leon Henderson, president, and William Leiserson and Rev. Kenneth Lyons; the Brookings Institution.

"These are some of the groups that are connected with the so-called pink, red and scarlet activities. Some of the Members of this House are also connected with some of these organizations * * *" (84th Cong. Record, 76th Congress, 1st sess., p. 10384 [July 28, 1939]).

[25]*Schenck* v. *United States*, 249 U. S. 47: "In many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done." "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree" (Holmes, J., p. 52).

[26]"But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas" (Holmes, J., dissenting opinion in *Abrams* v. *United States*, 250 U. S. 616, 630).

slavery, duelling, feeling for Finland, France or Great Britain indicate how great is the divergence among people and at different times, in political and economic fields[27].

A doctrine that permits a court to substitute in subsequent years its views of Americanism for those of the Naturalization Court is one of the most effective weapons that could be forged to subject the exercise of political rights by naturalized citizens to the domination of a governing group[28].

(c) "It is not to be admitted that the titles (under grants from the United States) shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice" wrote Mr. Justice Miller in *Maxwell Land-Grant Case*, 121 U. S. 325, 381[29]. He held that the

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[27]The fluctuating trend of opinion in the United States especially as to so-called radical views is shown in 48 Yale Law Journal, 111-2. "Since the Red Scare (of 1918), prosecutions under this statute (the Act of October 16, 1918, as amended by the Act of June 5, 1920, 3 U. S. C. §137) have inversely reflected the economic cycle, dwindling during the boom of twenties, but reviving steadily with the decline of prosperity." A note then quotes from official Labor Department statistics showing that the number of alien radicals deported were 1921, 446; 1924, 81; 1927, 9; 1930, 1; 1933, 74; 1936, 47. Thus, at the time of Petitioner's naturalization, deportation of alien radicals had practically ceased.

[28]Recognizing the occasional tyrannies of governing majorities those who won our independence "amended the Constitution so that free speech and assembly should be guaranteed" (Brandeis, J., opinion, *Whitney* v. *California*, 274 U. S. 357, 376).

". . . to suffer the civil Magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own" (Thomas Jefferson in the Virginia Act of December 26, 1785, c. 34, for establishing religious freedom, 12 Hening's Virginia Statutes at Large [1823] 84).

[29]A grant of citizenship is analogized to a grant of land (*Johannessen* v. *United States*, 225 U. S. 227, 238; *Tutun* v. *United States*, supra, pp. 576, 578).

requirement that evidence to set aside an instrument for fraud "must be clear, unequivocal and convincing", was peculiarly applicable to grants from the United States (p. 381).

Actually, the requirements for setting aside a grant of citizenship must be fundamentally more exacting because of the difficulty of adducing evidence clear, convincing and unequivocal in its character when beliefs are the issue, and because of the ease in setting aside such a grant if all that has to be done is for a court to disagree with the abstract political beliefs that a man held years before.

(d) Naturalized like native citizens are entitled to freedom of belief and all other guaranteed freedoms. If it be assumed that a Naturalization Court could deny citizenship to a person because it disapproved of his political beliefs, no such power in the absence of express legislative authorization will be construed to reside in a Cancellation Court. For no greater check upon freedom of speech could be devised than for law-abiding citizens to know that their status may be called into question by persons who may disagree with their political or economic views, and their lives uprooted, if a court is vested with power to re-examine the ideas that were held at the time of naturalization. In the face of such possibilities, ideas are bound to be driven underground and people to become cowards or hypocrites[30].

(e) If the decision below stands, naturalized citizens become a separate class with an unstable tenure. They are, indeed, subject to "the hazard of successful resistance to the whims and caprices" of persons at any time in

[30] "Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness." So wrote Thomas Jefferson in the Act of December 26, 1785, 12 Hening's Statutes at Large of Virginia (1823), ch. 34, p. 84.

power. The intolerant institutions that we have learned to fear in other countries—the curbs upon men's minds, the fears of reprisal for free expression—are fostered by the decision below[31].

THIRD

If cancellation of citizenship is to be decreed because of a man's political opinions, those opinions must be proved by clear and convincing evidence. They may not be attributed to him because he is a member of a political party,—especially where there are admittedly conflicting interpretations as to the doctrines of that party.

Much that has been said would apply if an applicant for citizenship had *admitted* that he held the views here imputed to him. But an additional vice in the judgment is that the views found to be disqualifying are *imputed* to the applicant despite his disavowal[32] that either he or the party to which he belonged held them. In order to cancel a grant, the evidence justifying such action must be "clear, unequivocal and convincing" (supra, p. 18), and if such action may ever be based upon opinions (*American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94, 104; and see dissenting opinion of Brandeis and Holmes, JJ., in *Pierce* v. *United States*, 252 U. S. 239, 266-7), it can be so only when the disqualifying opinions are convincingly shown to be those of the persons whose rights are declared forfeited.

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[31]Jefferson's First Inaugural Address, March 4, 1801: "And let us reflect that, having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little, if we countenance a political intolerance, as despotic, as wicked, and capable of as bitter and bloody persecutions" (2 Abridg. Deb. Cong. 490).

[32]R. 362, 373; see the Government's certiorari brief, pp. 4-5, 6-7; see also Petitioner's brief, pp. 33-4.

There is complete failure of proof that Petitioner can be charged with belief in—there is none that he can be charged with advocacy of—the overthrow of the Government and the Constitution and Laws of the United States by force and violence.

The court below[33] and the Government[34] concede that different people had different ideas as to the stand of the Communist Party on the subject of force and violence.[35]

The doctrine that a person may be deprived of liberty or property because of doctrines imputed to him from membership in a party is open at least to grave doubt[36], but

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[33]The Circuit Court of Appeals stated that the principles of the Communist Party, to which appellant "admittedly adhered, *may* have been such, that it was *highly improbable, if not impossible*, for appellant's testimony as to his beliefs to be true" (119 F. [2d] p. 503, italics supplied; R. 916).

"* * * In bringing these aims about, we find *sharply conflicting views* as to what method the Communist Party advocates. There is substantial evidence that the Communist Party expects to use and advocates overthrow of our government by force and violence. There is other evidence to support the view that such party neither contemplates nor advocates the use of force and violence in the overthrow of our government" (119 F. [2d] 504, italics supplied; R. 917).

[34]The Government fairly states the conflicts of the testimony in its Certiorari brief, pp. 7, 9-10.

[35]The evidence is summarized in Petitioner's brief, pp. 32-35.

[36]For "there is no sure test of what a party does advocate. The utterances of a leader may represent only his personal view and be rejected by his associates. Even platforms have never been taken very seriously in any party" (Chafee, *Free Speech in the United States* [1941], 223).

Even in the more orthodox political parties no one would think of attributing the same views to Senators Wheeler and Pepper, though they are bracketed as Democrats, or to Congressman Fish and Secretary of the Navy Knox, though they come under the party label of Republicans.

"We deem it important that this vital issue [that guilt is personal] the proper decision of which is essential to the security of the Republic, should not be obscured by the reception of testimony, statements or declarations as to matters here or abroad, in the attempt to indict a political party or organization, without first laying proper charges with proper specifications directly connecting the members accused with personal and guilty participation in illegal acts" (Memorial of Charles E. Hughes and others, *supra*, p. 15).

there can be no possible basis for such a doctrine where, as here, the record discloses conflicting views as to the stand of the party on the question of force and violence. In such a case, the forfeiture cannot be based solely on the inference—especially over Petitioner's denial (R. 362, 897-8) that he must have held one rather than another view (*American School of Magnetic Healing* v. *McAnnulty, supra*, 187 U. S. 94, 105, 107[37]). That falls far short of the clear and convincing proof necessary to cancel a grant.

The public interest requires the reversal of the judgment.

Dated, February 2, 1942.

Respectfully submitted,

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Amicus Curiae

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[37]In *Fiske* v. *Kansas*, 274 U. S. 380, the Supreme Court of Kansas thought it was open to the jury to find a sinister meaning to the preamble of the Constitution of the I. W. W. This court, however, reversing the judgment below, held: "There is no suggestion in the preamble that the industrial organization of workers as a class for the purpose of getting possession of the machinery of production and abolishing the wage system, was to be accomplished by any other than lawful methods; nothing advocating the overthrow of the existing industrial or political conditions by force, violence or unlawful means. And standing alone, as it did in this case, there was nothing which warranted the court or jury in ascribing to this language, either as an inference of law or fact, 'the sinister meaning attributed to it by the state'" (p. 386).

APPENDIX

I

EXCERPTS FROM NATURALIZATION LAWS AND REGULATIONS, JUNE 15, 1924

NATURALIZATION LAWS AND REGULATIONS

Naturalization Laws

Act of June 29, 1906 (34 Stat. L., Part 1, p. 596), as amended in sections 16, 17, and 19 by the act of Congress approved March 4, 1909[1] (35 Stat. L., Part 1, p. 1102); in section 13 by the act of Congress approved June 25, 1910[2] (36 Stat. L., Part 1, p. 830); by the act of Congress approved March 4, 1913[3] (37 Stat. L., Part 1, p. 736), creating the Department of Labor; and by the act of Congress approved May 9, 1918[4] (40 Stat. L., Part 1, p. 542)

An Act to provide for a uniform rule for the naturalization of aliens throughout the United States and establishing the Bureau of Naturalization

Act of June 29, 1906

Sec. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First: He shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his au-

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[1] See pp. 26-28.

[2] See p. 13.

[3] See p. 3.

[4] See p. 6.

thorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: *Provided, however,* That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.[1]

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living

[1]See U. S. *v.* Morena, 245 U. S. 392.

at the time of the filing of his petition: *Provided*, That if he has filed his declaration before the passage of this act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at lease two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or the District of Columbia,[2] in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

[2]The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

At the time of filing his petition there shall be filed with he clerk of the court a certificate from the Department f Labor, if the petitioner arrives in the United States fter the passage of this act, stating the date, place, and anner of his arrival in the United States,[1] and the decla- ation of intention of such petitioner, which certificate and eclaration shall be attached to and made a part of said etition.

Third. He shall, before he is admitted to citizenship, de- lare on oath in open court that he will support the Con- titution of the United States, and that he absolutely and ntirely renounces and abjures all allegiance and fidelity o any foreign prince, potentate, state, or sovereignty, and articularly by name to the prince, potentate, state, or sov- reignty of which he was before a citizen or subject; that e will support and defend the Constitution and laws of he United States against all enemies, foreign and do- nestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction f the court admitting any alien to citizenship that immedi- tely preceding the date of his application he has resided ontinuously within the United States five years at least, nd within the State or Territory where such court is at he time held one year at least, and that during that time e has behaved as a man of good moral character, attached o the principles of the Constitution of the United States, nd well disposed to the good order and happiness of the ame. In addition to the oath of the applicant, the testi- ony of at least two witnesses, citizens of the United tates, as to the facts of residence, moral character, and ttachment to the principles of the Constitution shall be equired, and the name, place of residence, and occupation f each witness shall be set forth in the record.

[1]See U. S. *v.* Ness, 245 U. S. 319, holding that the filing of a certificate arrival as provided in section 4 of the act of June 29, 1906, is an essential erequisite to a valid order of naturalization.

(Other remaining subdivisions of Sec. 4, Fifth to Thirteenth, are omitted. They are deemed immaterial.)

SEC. 5. That the clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpoena for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses cannot be produced upon the final hearing other witnesses may be summoned.

SEC. 6. That petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition: *Provided*, That no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful at the time and as a part of the naturalization of any alien, for the court, in its discretion, upon the petition of such alien, to make a decree changing the name of said alien, and his certificate of naturalization shall be issued to him in accordance therewith.

SEC. 7. That no person who disbelieves in or who is opposed to organized government, or who is a member of or

affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

SEC. 8. That no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language: *Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: *And provided further*, That the requirements of this section shall not apply to any alien who has prior to the passage of this act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further*, That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

SEC. 9. That every final hearing upon such petition shall be had in open court[1] before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall

[1]See U. S. *v.* Solomon Louis Ginsberg, 243 U. S. 472, April 9, 1917, holding that under section 9 of the act of June 29, 1906, a hearing in the judge's chambers adjoining the court room is not a compliance with the section.

be examined under oath before the court and in the presence of the court.

SEC. 22. That the clerk of any court exercising jurisdiction in naturalization proceedings, or any person acting under authority of this act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition, or certificate of citizenship, or other paper or writing required to be executed under the provisions of this act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years.

SEC. 23. That any person who knowingly procures naturalization in violation of the provisions of this act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thou-

sand dollars, or imprisoned not more than five years, or both.

SEC. 24. That no person shall be prosecuted, tried, or punished for any crime arising under the provisions of this act unless the indictment is found or the information is filed within five years next after the commission of such crime.

SEC. 25. That for the purpose of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to the date when this act shall go into effect, the existing naturalization laws shall remain in full force and effect.

SEC. 26. That sections twenty-one hundred and sixty-five, twenty-one hundred and sixty-seven, twenty-one hundred and sixty-eight, twenty-one hundred and seventy-three of the Revised Statutes of the United States of America, and section thirty-nine of chapter one thousand and twelve of the Statutes at Large of the United States of America for the year nineteen hundred and three, and all acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed.

SEC. 27. That substantially the following forms shall be used in the proceedings to which they relate:

DECLARATION OF INTENTION

(Invalid for all purposes seven years after the date hereof.)

....., ..., ss:

I, ..., ..., aged ..... years, occupation ....., do declare on oath (affirm) that my personal description is: Color ....., complexion ....., height ....., weight

....., color of hair ....., color of eyes ....., other visible distinctive marks .....; I was born in ....., on the ..... day of ....., anno Domini .....; I now reside at .....; I emigrated to the United States of America from ....., on the vessel .....; my last foreign residence was ..... It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to ....., of which I am now a citizen (subject); I arrived at the (port) of ....., in the State (Territory or the District of Columbia[1]) of ....., on or about the ..... day of ....., anno Domini .....; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me God.

(Original signature of declarant) ....

Subscribed and sworn to (affirmed) before me this ..... day of ....., anno Domini .....

[L. S.] ....,
(Official character of attestor.)

PETITION FOR NATURALIZATION

..... Court of .....

In the matter of the petition of .... to be admitted as a citizen of the United States of America.

To the ..... Court:

The petition of .... respectfully shows:

First. My full name is ....

[1]The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

Second. My place of residence is number .... street, city of ....., State (Territory or the District of Columbia[1]) of .....

Third. My occupation is ....

Fourth. I was born on the ..... day of ..... at .....

Fifth. I emigrated to the United States from ....., on or about the ..... day of ....., anno Domini ....., and arrived at the port of ....., in the United States, on the vessel .....

Sixth. I declared my intention to become a citizen of the United States on the ..... day of ....., at ....., in the ..... court of .....

Seventh. I am ..... married. My wife's name is .... She was born in ..... and now resides at ..... I have ..... children, and the name, date, and place of birth and place of residence of each of said children is as follows: ....; ....; ....

Eighth. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to ....., of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to wit, since ....., anno Domini ..... and in the State (Territory or the

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[1]The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

District of Columbia[1]) of _____ for one year at least next preceding the date of this petition, to wit, since _____ day of _____, anno Domini _____.

Eleventh. I have not heretofore made petition for citizenship to any court. (I made petition for citizenship to the _____ court of _____ at _____, and the said petition was denied by the said court for the following reasons and causes, to wit, _____, and the cause of such denial has since been cured or removed.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of Labor required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Dated _____.

(Signature of petitioner) _____ _____.

_____ _____, ss:

_____ _____, being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this _____ day of _____, anno Domini _____.

[L. S.]

_____ _____,
Clerk of the _____ Court.

[1]The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

AFFIDAVIT OF WITNESSES

_____ Court of _____

In the matter of the petition of _____ _____ to be admitted a citizen of the United States of America.

_____ _____, ss:

_____ _____, occupation _____, residing at _____, and _____ _____, occupation _____, residing at _____, each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known _____ _____, the petitioner above mentioned, to be a resident of the United States for a period of at least five years continuously immediately preceding the date of filing his petition, and of the State (Territory or the District of Columbia[1]) in which the above-entitled application is made for a period of _____ years immediately preceding the date of filing his petition; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted as a citizen of the United States.

_____ _____.

_____ _____.

Subscribed and sworn to before me this _____ day of _____, nineteen hundred and _____.

[L. S.]

_____ _____,

(Official character of attestor.)

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[1]The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

CERTIFICATE OF NATURALIZATION

Number _____.
Petition, volume _____, page _____.
Stub, volume _____, page _____.

(Signature of holder) _____ _____

Descirption of holder: Age, _____; height, _____; color, _____; complexion, _____; color of eyes, _____; color of hair, _____; visible distinguishing marks, _____. Name, age, and place of residence of wife, _____, _____, _____. Names, ages, and places of residence of minor children, _____, _____, _____; _____, _____, _____; _____, _____, _____.

_____ _____, ss:

Be it remembered, that at a _____ term of the _____ court of _____, held at _____ on the _____ day of _____, in the year of our Lord nineteen hundred and _____, _____, who previous to his (her) naturalization was a citizen or subject of _____, at present residing at number _____ _____ street, _____ city (town), _____ State (Territory or the District of Columbia[1]), having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this State for one year immediately preceding the date of the hearing of his (her) petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that ....he was entitled to be so admitted, it was thereupon ordered by the said court that ....he be admitted as a citizen of the United States of America.

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[1]The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

In testimony whereof the seal of said court is hereunto affixed on the _____ day of _____, in the year of our Lord nineteen hundred and _____ and of our independence the _____.

_____ _____

[L. S.] (Official character of attestor.)

STUB OF CERTIFICATE OF NATURALIZATION

No. of certificate, _____.

Name, _____ _____; age, _____.

Declaration of intention, volume _____, page _____.

Petition, volume _____, page _____.

Name, age, and place of residence of wife, _____, _____, _____. Names, ages, and places of residence of minor children, _____. _____

_____

Date of order, volume _____, page _____.

(Signature of holder) _____ _____.

SEC. 28. That the Secretary of Labor shall have power to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of this act. Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this act shall be admitted in evidence equally with the originals in any and all proceedings under this act and in all cases in which the originals thereof might be admissible as evidence.

Excerpts From Act of March 4, 1909

SEC. 79. Whoever shall knowingly use any certificate of naturalization heretofore or which hereafter may be granted by any court, which has been or may be procured through fraud or by false evidence, or which has been or

may hereafter be issued by the clerk or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; or whoever, for any fraudulent purpose whatever, shall falsely represent himself to be a citizen of the United States without having been duly admitted to citizenship, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

SEC. 80. Whoever, in any proceeding under or by virtue of any law relating to the naturalization of aliens, shall knowingly swear falsely in any case where an oath is made or affidavit taken, shall be fined not more than one thousand dollars and imprisoned not more than five years.

Naturalization Rules and Regulations

[Effective May 15, 1924]

FOREWORD

The following rules and regulations are promulgated under and pursuant to the provisions of section 28 of the act of June 29, 1906, as amended by the act of May 9, 1918, and supersede and repeal all prior rules and regulations.

The act of June 29, 1906, as amended, provides for a uniform rule for the naturalization of aliens throughout the United States, and applies generally to aliens who are free white persons or who are of African nativity or descent.

Rule 3.—Official Forms

SUBDIVISION A.—ESSENTIAL TO EXERCISE OF JURISDICTION

PARAGRAPH 1. Courts, before exercising jurisdiction in naturalization proceedings, shall cause the clerk of such court to obtain from the Bureau of Naturalization, in the

manner hereinafter provided, the proper blanks, record and order books, and supplies necessary in the naturalization of aliens; and, until such official forms and record and order books have been supplied to such court, the jurisdiction conferred by law to naturalize aliens shall not be exercised: *Provided*, That where sessions of the court are held at different places the judges of such court may require the clerk to obtain a separate supply of official forms and record and order books for each such place.

PAR. 2. The official forms and record and order books supplied by the Bureau of Naturalization shall be used exclusively in naturalization proceedings, and clerks of courts exercising naturalization jurisdiction shall refuse to accept and file any declaration of intention or petition for naturalization when the same is not prepared on the blank form particularly designated for such purpose.

SUBDIVISION B.—FORM PRESCRIBED

PARAGRAPH 1. The following forms shall be used exclusively by courts having naturalization jurisdiction in the exercise of such jurisdiction, to wit:

Form No.	Title
2202	Record of Declarations of Intention—Book of 100 declarations.
2202A	Record of Declarations of Intention—Book of 300 declarations.
2202B	Record of Declarations of Intention—Book of 500 declarations.
2202L	Record of Declaration of Intention.
2203	Declaration of Intention—Blank, duplicate and triplicate.
2204	Petitions for Naturalization and Record—Book of 100 each, originals and duplicates.

2204B Petitions for Naturalization and Record—Book of 250 each, originals and duplicates.
2204L Petitions for Naturalization and Record—Original and duplicate.
2205 Petition for Naturalization—Duplicate.
2206 Blank for posting name and date of final hearing of petitioners for naturalization.
2207 Certificates of Naturalization—Book of 10 each, originals and duplicates.
2207A Certificates of Naturalization—Book of 25 each, originals and duplicates.
2207B Certificates of Naturalization—Book of 50 each, originals and duplicates.
2208 Monthly Report of Forms Forwarded, Petitions Denied and Posted.
2208A Continuation Sheet of Monthly Report of Petitions Posted.
2212 Abstract of Collections of Naturalization Fees.
2215 Certified Copy of Declaration of Intention—Used in support of claims in public land entries.
2216 Certified Copy of Certificate of Naturalization—Used in support of claims in public land entries.
2220 Notice to take depositions under section 10.
2221 Notice to be forwarded after original naturalization record has been canceled by order of another court.

PAR. 2. Preliminary Forms 2213 and 2214 are designed to elicit the necessary information for the proper execution of a declaration of intention or petition for naturalization. Form 2213 applies solely to declarations of intention and Form 2214 to petitions for naturalization. Such forms shall be conveniently distributed by the Bureau of Naturalization and district directors of naturalization so that aliens desiring to declare their intention to become citizens

of the United States or to petition for naturalization may be supplied upon request. Form 2213, when completed by the alien, shall be delivered to the clerk of the proper court, who shall thereupon assist the alien in executing the official form (2203) of declaration of intention. Form 2214, when completed by the alien, shall be forwarded to the proper naturalization examiner, who shall thereupon assist such alien in the preparation of his petition for naturalization, on the official form prescribed for that purpose, and such examiner shall examine the alien as to his qualifications for citizenship, interview witnesses, prepare affidavits, and otherwise assist such alien to fully meet the requirements of the naturalization law.

SUBDIVISION C.—APPLICATION FOR FORMS

SUBDIVISION D.—AMENDMENTS AUTHORIZED

PARAGRAPH 1. The official forms for petition for naturalization and certificate of naturalization shall be altered or amended in any case according to the fact, as follows:

A. PETITION FOR NATURALIZATION

1. When petition is executed by a married woman who is not required to file a declaration of intention or certificate of arrival, or both, amend the reference thereto in the petition to read as follows: "Omitted pursuant to the act of September 22, 1922."
2. Where petition is executed by the widow and minor children of a deceased declarant, the fifth allegation of the petition shall be amended to read: "My husband declared his intention to become a citizen of the United States on the ..... day of ....., 19....., and died on the ..... day of ....., 19....."
3. Where petitioner desires to change his name, add to the prayer of the official form the following: "and

that his name be changed to _____." inserting the name by which the petitioner thereafter desires to be known.

4. Where petition is executed by an alien who served in the Army of the United States prior to January 1, 1900, strike out the fifth allegation of the official form and insert in lieu thereof the following: "I enlisted in the United States Army on the _____ day of _____, 1____, and was honorably discharged from the (name of company, regiment, etc.) on the _____ day of _____." In lieu of the entry immediately following the signature of the petitioner, and which refers to the declaration of intention and certificate of arrival, insert the following: "Honorable discharge certificate of petitioner was exhibited to me this _____ day of _____, 19__," which allegation shall be signed by the clerk or proper naturalization examiner.

5. Where the petition is executed by an alien who was in the military or naval service of the United States during the World War and who, before the termination of such war, was honorably discharged from such service on account of disability incurred in line of duty, insert the following: "I enlisted in the _____ (name branch of service, Army, Marine Corps, etc.) on the _____ day of _____, 19__, and was honorably discharged from the (name of organization, company, regiment, etc.) on the _____ day of _____, 19__, on account of disability incurred in line of duty." Immediately following the signature of the petitioner, insert the following: "Honorable discharge certificate of petitioner was exhibited to me this _____ day of _____, 19__," which allegation shall be signed by the clerk or proper naturalization examiner.

6. Where the petition is executed by an alien who served in the naval or military forces or upon vessels of

the United States, for the time and in the manner provided by the seventh subdivision of section 4 of the act of June 29, 1906, as amended, insert the following allegation: "I enlisted in the _____ (name branch of service) on the _____ day of _____, 19__," or in case of service on a vessel of the United States or on board a merchant or fishing vessel of the United States of more than twenty tons burden, insert the following allegation: "I served on a _____ (state vessel, or merchant or fishing vessel of more than twenty tons burden) of the United States from the _____ day of _____, 19__, to the _____ day of _____, 19__, and was honorably separated therefrom on the _____ day of _____, 19__," and after the entry immediately following the signature of the petitioner and which refers to the declaration of intention and certificate of arrival, insert the following: "Honorable discharge certificate of petitioner has been exhibited to me this _____ day of _____, 19__," which allegation shall be signed by the clerk or proper naturalization examiner.

7. Where petition is executed by an American Indian who served in the military or naval forces during the World War, insert in the petition, immediately following the sixth allegation of the official form, the following: "Filed under the provisions of the act of November 6, 1919" (41 Stat. L., 350).

8. Where petition is executed by an alien who is physically unable to speak, the eight [sic] allegation of the official form shall be amended to read: "I am not able to speak the English language, because I am physically unable to speak."

9. Where petition is filed by an alien under and pursuant to the provisions of subdivision 10 of section 4 of the act of June 29, 1906, as amended, strike out the allegation relating to the declaration of intention

and insert in lieu thereof the following: "Declaration of intention omitted under the terms of the tenth subdivision, section 4, act of June 29, 1906, as amended."

B. CERTIFICATES OF NATURALIZATION

1. Where a certificate of naturalization is issued either to a married man or to a married or single woman, after the 22nd day of September, 1922, strike out the following: "Name, age, and place of residence of wife."

Rule 4.—Declaration of Intention

SUBDIVISION A.—CLERK MAY REFUSE TO FILE

PARAGRAPH 1. Clerks of courts having naturalization jurisdiction shall not accept or file a declaration of intention made by an alien who is, or whose husband[1] is, of the (1) Chinese,[2] (2) Japanese,[3] or (3) Hindu[4] race.

PAR. 2. Clerks of courts having naturalization jurisdiction shall not accept or file a declaration of intention to become a citizen of the United States when made by an alien who does not reside within the judicial district of such court.

Rule 5.—Petition for Naturalization

SUBDIVISION A.—CLERK MAY REFUSE TO FILE

PARAGRAPH 1. Clerks of courts exercising naturalization jurisdiction shall refuse to accept and file a petition for

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[1]See act of September 22, 1922, 42 Stat. L., pt. 1, p. 1021.

[2]See act of May 6, 1882, 22 Stat. L., p. 61.

[3]See Takao Ozawa *v.* U. S., 260 U. S. 178; also Takuji Yamashita et al. *v.* Hinkle, Secretary of State, 260 U. S. 199.

[4]See U. S. *v.* Bhagat Singh Thind, 261 U. S. 204.

naturalization executed by an alien candidate for citizenship who is under 21 years of age at the time he executes such a petition.

PAR. 2. Clerks of courts shall refuse to accept and file a petition for naturalization executed by an alien candidate for citizenship, when it shall appear that such alien candidate declared his intention to become a citizen of the United States less than two and more than seven years prior to the date on which such petition is executed.

PAR. 3. A petition for naturalization executed by the widow and minor children of a deceased declarant pursuant to the provisions of the sixth subdivision of section 4 of the act of June 29, 1906, as amended, shall be made and filed not less than two nor more than seven years after the filing of the declaration of intention by the deceased husband and father.

SUBDIVISION B.—CERTIFICATE OF ARRIVAL REQUIRED

SUBDIVISION C.—NUMBERING AND INDEXING OF PETITIONS

SUBDIVISION D.—PROOF OF RESIDENCE—DEPOSITIONS

PARAGRAPH 1. Where a portion of the residence alleged in the petition for naturalization has been outside of the State, Territory, or District of Columbia where such petition is filed, such fact may be established by the depositions of two or more witnesses, citizens of the United States, and the personal appearance or oral testimony of such witnesses at the final hearing shall not be required.

SUBDIVISION E.—DECLARATION OF INTENTION

PARAGRAPH 1. Where a petition for naturalization is executed by the widow and minor children of a deceased alien who declared his intention to become a citizen of the United

States, such declaration of intention or a certified copy thereof shall be filed with and made part of the petition for naturalization.

PAR. 2. A petition for naturalization executed and filed pursuant to the provisions of the tenth subdivision of section 4 of the act of June 29, 1906, as amended, must be supported by the affidavit of the petitioner (Form 146) which may be accepted in lieu of a declaration of intention. Such affidavit shall be executed in duplicate and the original and duplicate thereof shall be attached to the original and duplicate of the petition for naturalization.

SUBDIVISION F.—AMERICAN INDIAN PETITIONERS

Rule 6.—Certificate of Naturalization

SUBDIVISION A.—EXECUTION AND ISSUANCE OF CERTIFICATE

PARAGRAPH 1. Certificates of naturalization shall be fully executed in duplicate by the clerk, and he shall enter on the stub of each certificate so issued, a memorandum of all the essential facts set forth in such certificate.

PAR. 2. Where a final order admitting the petitioner to citizenship has been duly signed by the judge, a certificate of naturalization shall be issued by the clerk to such petitioner, and the duplicate of such certificate shall be disposed of as provided in subdivision C of Rule 2.

PAR. 3. Where the name of the petitioner has been changed by order of court, the clerk shall make the following indorsement on the reverse side of the original and duplicate certificate of naturalization: "Name changed by order of Court from .....," inserting in full the original name of the petitioner. A similar notation shall be made on the stub of the certificate.

CITIZENSHIP BY NATURALIZATION

Necessary Requirements

An outline of the requirements necessary to become an American citizen by naturalization, as the same apply to aliens generally and to aliens falling within certain classifications, including alien women seeking to become citizens by naturalization and women seeking to regain citizenship lost through marriage to an alien, wherein consider:

A. Aliens generally.

(Subdivisions B to N omitted.)

A. Aliens Generally

1. Age.

   Must have reached the age of 18 years before declaring intention to become citizen, and must be 21 years of age at least at the time of filing the petition for naturalization.

2. Declaration of intention.

   Must make and file declaration of intention, in proper form, under oath before the clerk or deputy clerk of the court in the district in which he resides.

3. Petition for naturalization.

   Not less than two nor more than seven years after making declaration of intention must make and file petition for naturalization in proper form under oath in the court of the district wherein he then resides.

4. Certificate of arrival.

If he arrived in the United States after the 29th day of June, 1906, he must file with the petition for naturalization a certificate from the Department of Labor stating the date, place, and manner of his arrival in the United States.

5. Notice.

Notice of the filing of the petition for naturalization and the approximate date for final hearing thereon, together with the names of witnesses, must be posted for at least 90 days prior to the final hearing.

6. Proof.

He must establish to the satisfaction of the court (1) that immediately preceding the date of his petition for naturaiization he has resided continuously within the United States five years at least, and within the State or Territory where the court is, at the time held, one year at least; (2) that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; (3) that he is not an anarchist or a polygamist; and (4) that, being physically able to do so, he can speak the English language.

7. Witnesses.

In addition to his own oath the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution, is required.

8. Oath of allegiance.

Must be taken in open court before he is admitted to citizenship.

9. Certificate of naturalization.

Issued only when all of the foregoing requirements are met, and after the final order has been signed by the presiding judge.

(Note that subdivisions B to N, dealing with widows and minor children; Philippinos; Alien or Porto Rican in certain services of the United States; Alien honorably discharged; Alien serving in the military or naval forces of the United States; Alien women; Woman who has lost American citizenship by marriage to alien, are omitted.)

II

Excerpts From Nationality Code of 1940

The new Nationality Code is in the June, 1941 supplement to Sec. 705, Title 8 of the Act of October 14, 1940, U. S. C. A. It reads in part, as follows:

"§705. Same; (Eligibility for naturalization) *belief in government and property rights.* No person shall hereafter be naturalized as a citizen of the United States—

(a) Who advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that advises, advocates, or teaches opposition to all organized government; or

(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—

(1) the overthrow by force or violence of the government of the United States or of all forms of law; or

(2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or any other organized government, because of his or their official character; or

(3) the unlawful damage, injury, or destruction of property; or

(4) sabotage."

III

Excerpts From Act of June 29, 1906 As Amended

8 U. S. C. A., Sec. 405

"VALIDATING OR CANCELING NATURALIZATION CERTIFICATES.

"§ 405. Cancellation of certificates of citizenship fraudulently or illegally procured; aliens returning to country of nativity or residing permanently in foreign country; certified copy of order canceling certificate. It shall be the duty of the United States district attorneys for the respective districts, or the Commissioner or Deputy Commissioner of Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district

in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought."

• 4, 9 – Rutledge p 3
• 3,8 6. J. dissent

SUPREME COURT OF THE UNITED STATES.

No. 2.—October Term, 1942.

William Schneiderman, Petitioner, vs. The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[June 21, 1943.]

Mr. Justice Murphy delivered the opinion of the Court.

We brought this case here on certiorari, 314 U. S. 597, because of its importance and its possible relation to freedom of thought. The question is whether the naturalization of petitioner, an admitted member of the Communist Party of the United States, was properly set aside by the courts below some twelve years after it was granted. We agree with our brethren of the minority that our relations with Russia, as well as our views regarding its government and the merits of Communism are immaterial to a decision of this case. Our concern is with what Congress meant by certain statutes and whether the Government has proved its case under them.

While it is our high duty to carry out the will of Congress, in the performance of this duty we should have a jealous regard for the rights of petitioner. We should let our judgment be guided so far as the law permits by the spirit of freedom and tolerance in which our nation was founded, and by a desire to secure the blessings of liberty in thought and action to all those upon whom the right of American citizenship has been conferred by statute, as well as to the native born. And we certainly should presume that Congress was motivated by these lofty principles.

We are directly concerned only with the rights of this petitioner and the circumstances surrounding his naturalization, but we should not overlook the fact that we are a heterogeneous people. In some of our larger cities a majority of the school children are the offspring of parents only one generation, if that far, removed from the steerage of the immigrant ship, children of those who sought refuge in the new world from the cruelty and oppression of

the old, where men have been burned at the stake, imprisoned, and driven into exile in countless numbers for their political and religious beliefs. Here they have hoped to achieve a political status as citizens in a free world in which men are privileged to think and act and speak according to their convictions, without fear of punishment or further exile so long as they keep the peace and obey the law.

This proceeding was begun on June 30, 1939, under the provisions of § 15 of the Act of June 29, 1906, 34 Stat. 596, to cancel petitioner's certificate of citizenship granted in 1927. This section gives the United States the right and the duty to set aside and cancel certificates of citizenship on the ground of "fraud" or on the ground that they were "illegally procured."[1] The complaint charged that the certificate had been illegally procured in that petitioner was not, at the time of his naturalization, and during the five years preceding his naturalization "had not behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States,[2] but in truth and in fact during all of said times, respondent [petitioner] was a member of and affiliated with and believed in and supported the principles of certain organizations then known as the Workers (Communist) Party of America and the Young Workers (Communist) League

[1] At the time this proceeding was started this section read in part as follows:

"It shall be the duty of the United States district attorneys for the respective districts, or the Commissioner or Deputy Commissioner of Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured . . . ." 8 U. S. C. § 405.

This provision is continued in substance by § 338 of the Nationality Act of 1940, 54 Stat. 1137, 1158, 8 U. S. C. § 738.

[2] Section 4 of the Act of 1906 provided:

"Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record." 34 Stat. 596; 8 U. S. C. § 382.

of America, whose principles were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence." The complaint also charged fraudulent procurement in that petitioner concealed his Communist affiliation from the naturalization court. The Government proceeds here not upon the charge of fraud but upon the charge of illegal procurement.

This is not a naturalization proceeding in which the Government is being asked to confer the privilege of citizenship upon an applicant. Instead the Government seeks to turn the clock back twelve years after full citizenship was conferred upon petitioner by a judicial decree, and to deprive him of the priceless benefits that derive from that status. In its consequences it is more serious than a taking of one's property, or the imposition of a fine or other penalty. For it is safe to assert that nowhere in the world today is the right of citizenship of greater worth to an individual than it is in this country. It would be difficult to exaggerate its value and importance. By many it is regarded as the highest hope of civilized men. This does not mean that once granted to an alien, citizenship cannot be revoked or cancelled on legal grounds under appropriate proof. But such a right once conferred should not be taken away without the clearest sort of justification and proof. So, whatever may be the rule in a naturalization proceeding (see *United States* v. *Manzi*, 276 U. S. 463, 467), in an action instituted under § 15 for the purpose of depriving one of the precious right of citizenship previously conferred we believe the facts and the law should be construed as far as is reasonably possible in favor of the citizen. Especially is this so when the attack is made long after the time when the certificate of citizenship was granted and the citizen has meanwhile met his obligations and has committed no act of lawlessness. It is not denied that the burden of proof is on the Government in this case. For reasons presently to be stated this burden must be met with evidence of a clear and convincing character that when citizenship was conferred upon petitioner in 1927 it was not done in accordance with strict legal requirements.

We are dealing here with a court decree entered after an opportunity to be heard. At the time petitioner secured his certificate of citizenship from the federal district court for the South-

ern District of California notice of the filing of the naturalization petition was required to be given ninety days before the petition was acted on (§ 4 of the Act of 1906), the hearing on the petition was to take place in open court (§ 9), and the United States had the right to appear, to cross-examine petitioner and his witnesses, to introduce evidence, and to oppose the petition (§ 11). In acting upon the petition the district court exercised the judicial power conferred by Article III of the Constitution, and the Government had the right to appeal from the decision granting naturalization. *Tutun* v. *United States*, 270 U. S. 568. The record before us does not reveal the circumstances under which petitioner was naturalized except that it took place in open court. We do not know whether or not the Government exercised its right to appear and to appeal. Whether it did or not, the hard fact remains that we are here re-examining a judgment, and the rights solemnly conferred under it.

This is the first case to come before us in which the Government has sought to set aside a decree of naturalization years after it was granted on a charge that the finding of attachment was erroneous. Accordingly for the first time we have had to consider the nature and scope of the Government's right in a denaturalization proceeding to re-examine a finding and judgment of attachment upon a charge of illegal procurement. Because of the view we take of this case we do not reach, and therefore do not consider, two questions which have been raised concerning the scope of that right.

The first question is whether, aside from grounds such as lack of jurisdiction or the kind of fraud which traditionally vitiates judgments, cf. *United States* v. *Throckmorton*, 98 U. S. 61; *Kibbe* v. *Benson*, 17 Wall. 624, Congress can constitutionally attach to the exercise of the judicial power under Article III of the Constitution, authority to re-examine a judgment granting a certificate of citizenship after that judgment has become final by exhaustion of the appellate process or by a failure to invoke it.[3]

[3] Since 1790 Congress has conferred the function of admitting aliens to citizenship exclusively upon the courts. In exercising their authority under this mandate the federal courts are exercising the judicial power of the United States, conferred upon them by Article III of the Constitution. Tutun v. United States, 270 U. S. 568. For this reason it has been suggested that a decree of naturalization, even though the United States does not appear, cannot be compared (as was done in Johannessen v. United States, 225 U. S. 227, 238) to an administrative grant of land or of letters patent for invention, and that the permissible area of re-examination is different in the two situations.

The second question is whether under the Act of 1906 as it was in 1927 the Government, in the absence of a claim of fraud and relying wholly upon a charge of illegal procurement, can secure a *de novo* re-examination of a naturalization court's finding and judgment that an applicant for citizenship was attached to the principles of the Constitution.

We do not consider these questions. For though we assume, without deciding, that in the absence of fraud a certificate of naturalization can be set aside under § 15 as "illegally procured" because the finding as to attachment would later seem to be erroneous, we are of the opinion that this judgment should be reversed. If a finding of attachment can be so reconsidered in a denaturalization suit, our decisions make it plain that the Government needs more than a bare preponderance of the evidence to prevail. The remedy afforded the Government by the denaturalization statute has been said to be a narrower one than that of direct appeal from the granting of a petition. *Tutun* v. *United States*, 270 U. S. 568, 579; cf. *United States* v. *Ness*, 245 U. S. 319, 325. *Johannessen* v. *United States* states that a certificate of citizenship is "an instrument granting political privileges, and open like other public grants to be revoked if and when it shall be found to have been unlawfully or fraudulently procured. It is in this respect closely analogous to a public grant of land, . . ." 225 U. S. 227, 238. See also *Tutun* v. *United States, supra.* To set aside such a grant the evidence must be "clear, unequivocal, and convincing"—"it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt". *Maxwell Land-Grant Case*, 121 U. S. 325, 381; *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273, 300; cf. *United States* v. *Rovin*, 12 F. 2d 942, 944. See Wigmore, Evidence, (3d Ed.) § 2498. This is so because rights once conferred should not be lightly revoked. And more especially is this true when the rights are precious and when they are conferred by solemn adjudication, as is the situation when citizenship is granted. The Government's evidence in this case does not measure up to this exacting standard.

Certain facts are undisputed. Petitioner came to this country from Russia in 1907 or 1908 when he was approximately three. In 1922, at the age of sixteen, he became a charter member of the Young Workers (now Communist) League in Los Angeles and remained a member until 1929 or 1930. In 1924, at the age

of eighteen, he filed his declaration of intention to become a citizen. Later in the same year or early in 1925 he became a member of the Workers Party, the predecessor of the Communist Party of the United States. That membership has continued to the present. His petition for naturalization was filed on January 18, 1927, and his certificate of citizenship was issued on June 10, 1927, by the United States District Court for the Southern District of California. He had not been arrested or subjected to censure prior to 1927,[4] and there is nothing in the record indicating that he was ever connected with any overt illegal or violent action or with any disturbance of any sort.

For its case the United States called petitioner, one Humphreys, a former member of the Communist Party, and one Hynes, a Los Angeles police officer formerly in charge of the radical squad, as witnesses, and introduced in evidence a number of documents. Petitioner testified on his own behalf, introduced some documentary evidence, and read into the record transcripts of the testimony of two university professors given in another proceeding.

Petitioner testified to the following: As a boy he lived in Los Angeles in poverty stricken circumstances and joined the Young Workers League to study what the principles of Communism had to say about the conditions of society. He considered his membership and activities in the League and the Party during the five-year period between the ages of sixteen and twenty-one before he was naturalized, as an attempt to investigate and study the causes and reasons behind social and economic conditions. Meanwhile he was working his way through night high school and college. From 1922 to about 1925 he was "educational director" of the League. The duties of this non-salaried position were to organize classes, open to the public, for the study of Marxist theory, to register students and to send out notices for meetings; petitioner did no teaching. During 1925 and 1926 he was corresponding secretary of the Party in Los Angeles; this was a clerical, not an executive position. In 1928 he became an organizer or official spokesman for the League. His first executive position with the Party came in 1930 when he was made an organizational secretary first in California, then in Connecticut and later in Minnesota where he was the Communist Party candidate for governor in 1932. Since 1934 he has been a member of

[4] The record contains nothing to indicate that the same is not true for the period after 1927.

the Party's National Committee. At present he is secretary of the Party in California.

Petitioner testified further that during all the time he has belonged to the League and the Party he has subscribed to the principles of those organizations. He stated that he "believed in the essential correctness of the Marx theory as applied by the Communist Party of the United States", that he subscribed "to the philosophy and principles of Socialism as manifested in the writings of Lenin", and that his understanding and interpretation of the program, principles and practice of the Party since he joined "were and are essentially the same as those enunciated" in the Party's 1938 Constitution. He denied the charges of the complaint and specifically denied that he or the Party advocated the overthrow of the Government of the United States by force and violence, and that he was not attached to the principles of the Constitution. He considered membership in the Party compatible with the obligations of American citizenship. He stated that he believed in retention of personal property for personal use but advocated social ownership of the means of production and exchange, with compensation to the owners. He believed and hoped that socialization could be achieved here by democratic processes but history showed that the ruling minority has always used force against the majority before surrendering power. By dictatorship of the proletariat petitioner meant that the "majority of the people shall really direct their own destinies and use the instrument of the state for these truly democratic ends." He stated that he would bear arms against his native Russia if necessary.

Humphreys testified that he had been a member of the Communist Party and understood he was expelled because he refused to take orders from petitioner. He had been taught that present forms of government would have to be abolished "through the dictatorship of the proletariat" which would be established by "a revolutionary process". He asserted that the program of the Party was the socialization of all property without compensation. With regard to advocacy of force and violence he said: "the Communist Party took the defensive, and put the first users of force upon the capitalistic government; they claimed that the capitalistic government would resist the establishment of the Soviet system, through force and violence, and that the working class would be justified in using force and violence to establish the Soviet system of society."

Hynes testified that he had been a member of the Party for eight months in 1922. He stated that the Communist method of bringing about a change in the form of government is one of force and violence; he based this statement upon: "knowledge I have gained as a member in 1922 and from what further knowledge I have gained from reading various official publications, published and circulated by the Communist Party and from observation and actual contact with the activities of the Communist Party . . ."[5] On cross examination Hynes admitted that he never attempted a philosophic analysis of the literature he read, but only read it to secure evidence, reading and underscoring those portions which, in his opinion, "had to do with force or violence or overthrowing of this system of government other than by lawful means provided in the Constitution." He testified that he never saw any behavior on petitioner's part that brought him into conflict with any law.

The testimony of the two professors discussed Marxian theory as evidenced by the writings of Marx, Engels and Lenin, and concluded that it did not advocate the use of force and violence as a method of attaining its objective.

In its written opinion the district court held that petitioner's certificate of naturalization was illegally procured because the organizations to which petitioner belonged were opposed to the principles of the Constitution and advised, taught and advocated the overthrow of the Government by force and violence, and therefore petitioner, "by reason of his membership in such organizations and participation in their activities, was not 'attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same'." 33 F. Supp. 510, 513.

The district court also made purported findings of facts to the effect that petitioner was not attached to the principles of the Constitution and well disposed to the good order and happiness of the same, and was a disbeliever in organized government, that he fraudulently concealed his membership in the League and the Party from the naturalization court, and that his oath of allegiance was false. The conclusion of law was that the certificate was illegally and fraudulently procured. The pertinent findings of

[5] For a discussion of the adequacy of somewhat similar testimony by Hynes see Ex parte Fierstein, 41 F. 2d 53.

fact on these points, set forth in the margin,[6] are but the most general conclusions of ultimate fact. It is impossible to tell from them upon what underlying facts the court relied, and whether proper statutory standards were observed. If it were not rendered unnecessary by the broad view we take of this case, we would be inclined to reverse and remand to the district court for the purpose of making adequate findings.

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[6] IV. "The Court finds that it is true that said decree and certificate of naturalization were illegally procured and obtained in this: That respondent [petitioner] was not, at the time of his naturalization by said Court, and during the period of five years immediately preceding the filing of his petition for naturalization had not behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.

"The Court finds that it is not true that at the time of the filing of his petition for naturalization respondent was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government.

"The Court finds that in truth and in fact during all of said times respondent had not behaved as a man attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same, but was a member of and affiliated with and believed in and supported the principles of certain organizations known as the Workers Party of America, the Workers (Communist) Party of America, the Communist Party of the United States of America, the Young Workers League of America, the Young Workers (Communist) League of America and the Young Communist League of America, which organizations were, and each of them was, at all times herein mentioned, a section of the Third International, the principles of all of which said organizations were opposed to the principles of the Constitution of the United States, and advised, advocated, and taught the overthrow of the Government, Constitution and laws of the United States by force and violence and taught disbelief in and opposition to organized government.

V. "The Court further finds that during all of said times the respondent has been and now is a member of said organizations and has continued to believe in, advocate and support the said principles of said organizations."

VI. (The substance of this finding is that petitioner fraudulently concealed his Communist affiliation from the naturalization court. It is not set forth because it is not an issue here. See Note 7, *infra*).

VII. "The court further finds that it is true that said decree and certificate of naturalization were illegally and fraududently procured and obtained in this: That before respondent [petitioner] was admitted to citizenship as aforesaid, he declared on oath in open court that he would support the Constitution of the United States, and that he absolutely and entirely renounced and abjured all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and that he would support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same, whereas in truth and in fact, at the time of making such declarations on oath in open court, respondent [petitioner] did not intend to support the Constitution of the United States, and did not intend absolutely and entirely to renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and did not intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and/or to bear true faith and allegiance to the same, but respondent at said time intended to and did maintain allegiance and fidelity to the Union of Soviet Socialist Republics and to the said Third International, and intended to adhere to and support and

The Circuit Court of Appeals affirmed on the ground that the certificate was illegally procured, holding that the finding that petitioner's oath was false was not "clearly erroneous". 119 F. 2d 500.[7] We granted certiorari, and after having heard argument and reargument, now reverse the judgments below.

I

The Constitution authorizes Congress "to establish an uniform rule of naturalization" (Art I, § 8, cl. 4), and we may assume that naturalization is a privilege, to be given or withheld on such conditions as Congress sees fit. Cf. *United States* v. *Macintosh*, 283 U. S. 605, 615, and the dissenting opinion of Chief Justice Hughes, *ibid.* at p. 627. See also *Tutun* v. *United States*, 270 U. S. 568, 578; *Turner* v. *Williams*, 194 U. S. 279. But because of our firmly rooted tradition of freedom of belief, we certainly will not presume in construing the naturalization and denaturalization acts that Congress meant to circumscribe liberty of political thought by general phrases in those statutes. As Chief Justice Hughes said in dissent in the *Macintosh* case, such general phrases "should be construed, not in opposition to, but in accord with, the theory and practice of our Government in relation to freedom of conscience." 283 U. S. at 635. See also Holmes, J., dissenting in *United States* v. *Schwimmer*, 279 U. S. 644, 653-55.

When petitioner was naturalized in 1927, the applicable statutes did not proscribe communist beliefs or affiliation as such.[8] They did forbid the naturalization of disbelievers in organized government or members of organizations teaching such disbelief. Polygamists and advocates of political assassination were also

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defend and advocate the principles and teachings of said Third International, which principles and teachings were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence."

[7] That court said it was unnecessary to consider the charge of fraudulent procurement by concealment of petitioner's Communist affiliation. The Government has not pressed this charge here, and we do not consider it.

[8] The Nationality Act of 1940, while enlarging the category of beliefs disqualifying persons *thereafter* applying for citizenship, does not in terms make communist beliefs or affiliation grounds for refusal of naturalization. § 305, 54 Stat. 1137, 1141; 8 U. S. C. § 705.

Bills to write a definition of "communist" into the Immigration and Deportation Act of 1918 as amended (40 Stat. 1012, 41 Stat. 1008) and to provide for the deportation of "communists" failed to pass Congress in 1932 and again in 1935. See H. R. 12044, H. Rep. No. 1353, S. Rep. No. 808, 75 Cong. Rec. 12097-108, 72d Cong., 1st Sess. See also H. R. 7120, H. Rep. No. 1023, pts. 1 and 2, 74th Cong., 1st Sess.

barred.[9] Applicants for citizenship were required to take an oath to support the Constitution, to bear true faith and allegiance to the same and the laws of the United States, and to renounce all allegiance to any foreign prince, potentate, state or sovereignty.[10] And, it was to "be made to appear to the satisfaction of the court" of naturalization that immediately preceding the application, the applicant "has resided continuously within the United States five years at least, . . . and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same."[11] Whether petitioner satisfied this last requirement is the crucial issue in this case.

To apply the statutory requirement of attachment correctly to the proof adduced, it is necessary to ascertain its meaning. On its face the statutory criterion is not attachment to the Constitution, but *behavior* for a period of five years as a man attached to its principles and well disposed to the good order and happiness of the United States. Since the normal connotation of behavior is conduct, there is something to be said for the proposition that the 1906 Act created a purely objective qualification, limiting inquiry to an applicant's previous conduct.[12] If this objective standard is the requirement, petitioner satisfied the statute. His conduct has been law abiding in all respects. Ac-

[9] Section 7 of Act of June 26, 1906, 8 U. S. C. § 364.

[10] Section 4 of Act of June 26, 1906, 8 U. S. C. § 381.

[11] Section 4 of Act of June 26, 1906, 8 U. S. C. § 382.

[12] The legislative history of the phrase gives some support to this view. The behavior requirement first appeared in the Naturalization Act of 1795, 1 Stat. 414, which was designed to tighten the Act of 1790, 1 Stat. 103. The discursive debates on the 1795 Act cast little light upon the meaning of "behaved", but indicate that the purpose of the requirement was to provide a probationary period during which aliens could learn of our Constitutional plan. Some members were disturbed by the political ferment of the age and spoke accordingly, while others regarded the United States as an asylum for the oppressed and mistrusted efforts to probe minds for beliefs. It is perhaps significant that the oath, which was adopted over the protest of Madison, the sponsor of the bill, did not require the applicant to swear that he was attached to the Constitution, but only that he would support it. See 4 Annals of Congress, pp. 1004-09, 1021-23, 1026-27, 1030-58, 1062, 1064-66. See also Franklin, Legislative History of Naturalization in the United States (1906), Chapter. IV.

The behavior requirement was reenacted in 1802 (2 Stat. 153) at the recommendation of Jefferson for the repeal of the stringent Act of 1798, 1 Stat. 566. See Franklin, *op cit.*, Chapter VI. It continued unchanged until the Act of 1906 which for the first time imported the test of present belief into the naturalization laws when it provided in § 7 that disbelievers in organized government

cording to the record he has never been arrested, or connected with any disorder, and not a single written or spoken statement of his, during the relevant period from 1922 to 1927 or thereafter, advocating violent overthrow of the Government, or indeed even a statement, apart from his testimony in this proceeding, that he desired any change in the Constitution has been produced. The sole possible criticism is petitioner's membership and activity in the League and the Party, but those memberships *qua* memberships, were immaterial under the 1906 Act.

In *United States* v. *Schwimmer*, 279 U. S. 644, and *United States* v. *Macintosh*, 283 U. S. 605, however, it was held that the statute created a test of belief—that an applicant under the 1906 Act must not only behave as a man attached to the principles of the Constitution, but must be so attached in fact at the time of naturalization. We do not stop to reexamine this construction for even if it is accepted the result is not changed. As mentioned before, we agree with the statement of Chief Justice Hughes in dissent in *Macintosh's* case that the behavior requirement is "a general phrase which should be construed, not in opposition to, but in accord with, the theory and practice of our Government in relation to freedom of conscience." 283 U. S. at 635. See also the dissenting opinion of Justice Holmes in the *Schwimmer* case, *supra*, 653-55. As pointed out before, this is a denaturalization proceeding, and it is a judgment, not merely a claim or a grant, which is being attacked. Assuming as we have that the United

and polygamists could not become citizens. The continuation of the behavior test for attachment is some indication that a less searching examination was intended in this field—that conduct and not belief (other than anarchist or polygamist) was the criterion. The Nationality Act of 1940 changed the behavior requirement to a provision that no person could be naturalized unless he "has been and still is a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States", 54 Stat. 1142, 8 U. S. C. § 707. The Report of the President's Committee to Revise the Nationality Laws (1939) indicates this change in language was not regarded as a change in substance. p. 23. The Congressional committee reports are silent on the question. The sponsors of the Act in the House, however, declared generally an intent to tighten and restrict the naturalization laws. See 86 Cong. Rec. 11939, 11942, 11947, 11949. The chairman of the sub-committee who had charge of the bill stated that "substantive changes are necessary in connection with certain rights, with a view to preventing persons who have no real attachment to the United States from enjoying the high privilege of American nationality." 86 Cong. Rec. 11948. This remark suggests that the change from "behaved as a man attached" to "has been and still is a person attached" was a change in meaning.

States is entitled to attack a finding of attachment upon a charge of illegality, it must sustain the heavy burden which then rests upon it to prove lack of attachment by "clear, unequivocal, and convincing" evidence which does not leave the issue in doubt. When the attachment requirement is construed as indicated above, we do not think the Government has carried its burden of proof.

The claim that petitioner was not in fact attached to the Constitution and well disposed to the good order and happiness of the United States at the time of his naturalization and for the previous five year period is twofold: *First*, that he believed in such sweeping changes in the Constitution that he simply could not be attached to it; *Second*, that he believed in and advocated the overthrow by force and violence of the Government, Constitution and laws of the United States.

In support of its position that petitioner was not in fact attached to the principles of the Constitution because of his membership in the League and the Party, the Government has directed our attention first to petitioner's testimony that he subscribed to the principles of those organizations, and then to certain alleged Party principles and statements by Party Leaders which are said to be fundamentally at variance with the principles of the Constitution. At this point it is appropriate to mention what will be more fully developed later—that under our traditions beliefs are personal and not a matter of mere association, and that men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles. Said to be among those Communist principles in 1927 are: the abolition of private property without compensation; the erection of a new proletarian state upon the ruins of the old bourgeois state; the creation of a dictatorship of the proletariat; denial of political rights to others than members of the Party or of the proletariat; and the creation of a world union of soviet republics. Statements that American democracy "is a fraud"[13] and that the purposes of the Party are "utterly antagonistic to the purposes for which the American democracy, so called, was formed,[14] are stressed.

Those principles and views are not generally accepted—in fact

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[13] Program and Constitution of the Workers Party (1921-24).

[14] Acceptance speech of William Z. Foster, the Party's nominee for the Presidency in 1928.

they are distasteful to most of us—and they call for considerable change in our present form of government and society. But we do not think the government has carried its burden of proving by evidence which does not leave the issue in doubt that petitioner was not in fact attached to the principles of the Constitution and well disposed to the good order and happiness of the United States when he was naturalized in 1927.

The constitutional fathers, fresh from a revolution, did not forge a political strait-jacket for the generations to come.[15] Instead they wrote Article V and the First Amendment, guaranteeing freedom of thought, soon followed. Article V contains procedural provisions for constitutional change by amendment without any present

[15] Writing in 1816 Jefferson said: "Some men look at constitutions with sanctimonious reverence and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present; and forty years of experience in government is worth a century of book-reading; and this they would say themselves, were they to rise from the dead. I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand and hand with the progress of the human mind. If that becomes more developed, more enlightened, if any discoveries are made, any truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain as under the regimen of their barbarous ancestors." Ford, Jefferson's Writings, vol. X, p. 42.

Compare his First Inaugural Address: "And let us reflect that, having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little if we countenance a political intolerance as despotic, as wicked, and capable of as bitter and bloody persecutions. During the throes and convulsions of the ancient world, during the agonizing spasms of infuriated man, seeking through blood and slaughter his long-lost liberty, it was not wonderful that the agitation of the billows should reach even this distant and peaceful shore; that this should be more felt and feared by some and less by others, and should divide opinions as to measures of safety. But every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all Republicans, we are all Federalists. *If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.* I know, indeed, that some honest men fear that a republican government cannot be strong, that this Government is not strong enough; but would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us free and firm on the theoretic and visionary fear that this Government, the world's best hope, may by possibility want energy to preserve itself? I trust not." Richardson, Messages and Papers of the Presidents, vol. I, p. 310 (emphasis added).

limitation whatsoever except that no State may be deprived of equal representation in the Senate without its consent. Cf. *National Prohibition Cases*, 253 U. S. 350. This provision and the many important and far-reaching changes made in the Constitution since 1787 refute the idea that attachment to any particular provision or provisions is essential, or that one who advocates radical changes is necessarily not attached to the Constitution. *United States* v. *Rovin*, 12 F. 2d 942, 944-45.[16] As Justice Holmes said, "Surely it cannot show lack of attachment to the principles of the Constitution that [one] thinks it can be improved." *United States* v. *Schwimmer, supra* (dissent). Criticism of, and the sincerity of desires to improve the Constitution should not be judged by conformity to prevailing thought because, "if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought that we hate." *Id.* See also Chief Justice Hughes dissenting in *United States* v. *Macintosh, supra*, p. 635. Whatever attitude we may individually hold toward persons and organizations that believe in or advocate extensive changes in our existing order, it should be our desire and concern at all times to uphold the right of free discussion and free thinking to which we as a people claim primary attachment. To neglect this duty in a proceeding in which we are called upon to judge whether a particular individual has failed to manifest attachment to the Constitution would be ironical indeed.

Our concern is with what Congress meant to be the extent of the area of allowable thought under the statute. By the very generality of the terms employed it is evident that Congress intended an elastic test, one which should not be circumscribed by attempts at precise definition. In view of our tradition of freedom of thought, it is not to be presumed that Congress in the Act of 1906, or its predecessors of 1795 and 1802,[17] intended to offer naturalization only to those whose political views coincide

[16] See also 18 Cornell Law Quarterly 251; Freund, United States v. Macintosh, A Symposium, 26 Illinois Law Review 375, 385; 46 Harvard Law Review 325.

As a matter of fact one very material change in the Constitution as it stood in 1927 when petitioner was naturalized has since been effected by the repeal of the Eighteenth Amendment.

[17] See note 12, *ante*.

with those considered best by the founders in 1787 or by the majority in this country today. Especially is this so since the language used, posing the general test of "attachment" is not necessarily susceptible of so repressive a construction.[18] The Government agrees that an alien "may think that the laws and the Constitution should be amended in some or many respects" and still be attached to the principles of the Constitution within the meaning of the statute. Without discussing the nature and extent of those permissible changes, the Government insists that an alien must believe in and sincerely adhere to the "general political philosophy" of the Constitution.[19] Petitioner is said to be opposed to that "political philosophy", the minimum requirements of which are set forth in the margin.[20] It was argued at the bar that since Article V contains no limitations, a person can be attached to the Constitution no matter how extensive the changes are that he desires, so long as he seeks to achieve his ends within the framework of Article V. But we need not consider the validity of this extreme position for if the Government's construction is accepted, it has not carried its burden of proof even under its own test.

The district court did not state in its findings what principles held by petitioner or by the Communist Party were opposed to the Constitution and indicated lack of attachment. See Note 6, *ante*. In its opinion that court merely relied upon *In re Saralieff*, 59 F. 2d 436, and *United States* v. *Tapolcsanyi*, 40 F. 2d 255, with-

[18] In 1938 Congress failed to pass a bill denying naturalization to any person "who believes in any form of government for the United States contrary to that now existing in the United States, or who is a member of or affiliated with any organization which advocates any form of government for the United States contrary to that now existing in the United States." H. R. 9690, 75th Cong., 3d Sess.

[19] Brief, pp. 103-04. Supporting this view are In re Saralieff, 59 F. 2d 436; In re Van Laeken, 22 F. Supp. 145; In re Shanin, 278 Fed. 739. See also United States v. Tapolcsanyi, 40 F. 2d 255; Ex parte Sauer, 81 Fed. 355; United States v. Olsson, 196 Fed. 562, reversed on stipulation, 201 Fed. 1022.

[20] "The test is . . . whether he substitutes revolution for evolution, destruction for construction, whether he believes in an ordered society, a government of laws, under which the powers of government are granted by the people but under a grant which itself preserves to the individual and to minorities certain rights or freedoms which even the majority may not take away; whether, in sum, the events which began at least no further back than the Declaration of Independence, followed by the Revolutionary War and the adoption of the Constitution, establish principles with respect to government, the individual, the minority and the majority, by which ordered liberty is replaced by disorganized liberty". Brief, p. 105.

out fresh examination of the question in the light of the present record. 33 F. Supp. 510. The Circuit Court of Appeals deduced as Party principles roughly the same ones which the Government here presses and stated "these views are not those of our Constitution." 119 F. 2d at 503-04.

With regard to the Constitutional changes he desired petitioner testified that he believed in the nationalization of the means of production and exchange with compensation, and the preservation and utilization of our "democratic structure . . . as far as possible for the advantage of the working classes." He stated that the "dictatorship of the proletariat" to him meant "not a government, but a state of things" in which "the majority of the people shall really direct their own destinies and use the instrument of the state for these truly democratic ends." None of this is necessarily incompatible with the "general political philosophy" of the Constitution as outlined above by the Government. It is true that the Fifth Amendment protects private property, even against taking for public use without compensation. But throughout our history many sincere people whose attachment to the general constitutional scheme cannot be doubted have, for various and even divergent reasons, urged differing degrees of governmental ownership and control of natural resources, basic means of production, and banks and the media of exchange, either with or without compensation. And something once regarded as a species of private property was abolished without compensating the owners when the institution of slavery was forbidden.[21] Can it be said that the author of the Emancipation Proclamation and the supporters of the Thirteenth Amendment were not attached to the Constitution? We conclude that lack of attachment to the Constitution is not shown on the basis of the changes which petitioner testified he desired in the Constitution.

Turning now to a *seriatim* consideration of what the Government asserts are principles of the Communist Party, which petitioner believed and which are opposed to our Constitution, our conclusion remains the same—the Government has not proved by "clear, unequivocal and convincing" evidence that the naturalization court could not have been satisfied that petitioner was attached to the principles of the Constitution when he was naturalized.

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[21] See generally Thorpe, Constitutional History of the United States (1901), vol. III, book V.

Compare the effect of the Eighteenth Amendment.

We have already disposed of the principle of nationalization of the agents of production and exchange with or without compensation. The erection of a new proletariat state upon the ruins of the old bourgeois state, and the creation of a dictatorship of the proletariat may be considered together. The concept of the dictatorship of the proletariat is one loosely used, upon which more words than light have been shed. Much argument has been directed as to how it is to be achieved, but we have been offered no precise definition here. In the general sense the term may be taken to describe a state in which the workers or the masses, rather than the bourgeoisie or capitalists are the dominant class. Theoretically it is control by a class, not a dictatorship in the sense of absolute and total rule by one individual. So far as the record before us indicates, the concept is a fluid one, capable of adjustment to different conditions in different countries. There are only meager indications of the form the "dictatorship" would take in this country. It does not appear that it would necessarily mean the end of representative government or the federal system. The Program and Constitution of the Workers Party (1921-24) criticized the constitutional system of checks and balances, the Senate's power to pass on legislation, and the involved procedure for amending the Constitution, characterizing them as devices designed to frustrate the will of the majority.[22] The 1928 platform of the Communist Party of the United States, adopted after petitioner's naturalization and hence not strictly relevant, advocated the abolition of the Senate, of the Supreme Court, and of the veto power of the President, and replacement of congressional districts with "councils of workers" in which legislative and executive power would be united. These would indeed be significant changes in our present governmental structure—changes which it is safe to say are not desired by the majority of the people in this country—but whatever our personal views, as judges we cannot say that a person who advocates their adoption through peaceful and constitutional means is not in fact attached to the Constitution—those institutions are not enumerated as necessary in the Government's test of "general political philosophy", and it is conceivable that "ordered liberty" could be maintained without them. The Senate has not gone free

22 Petitioner testified that this was never adopted, but was merely a draft for study.

of criticism and one object of the Seventeenth Amendment was to make it more responsive to the public will.[23] The unicameral legislature is not unknown in the country.[24] It is true that this Court has played a large part in the unfolding of the constitutional plan (sometimes too much so in the opinion of some observers), but we would be arrogant indeed if we presumed that a government of laws, with protection for minority groups, would be impossible without it. Like other agencies of government, this Court at various times in its existence has not escaped the shafts of critics whose sincerity and attachment to the Constitution is beyond question—critics who have accused it of assuming functions of judicial review not intended to be conferred upon it, or of abusing those functions to thwart the popular will, and who have advocated various remedies taking a wide range.[24a] And it is hardly conceivable that the consequence of freeing the legislative branch from the restraint of the executive veto would be the end of constitutional government.[24b] By this discussion we certainly do not mean to indicate that we would favor such changes. Our preference and aversions have no bearing here. Our concern is with the extent of the allowable area of thought under the statute. We decide only that it is possible to advocate such changes and still be attached to the Constitution within the meaning of the Government's minimum test.

If any provisions of the Constitution can be singled out as requiring unqualified attachment, they are the guaranties of the Bill of Rights and especially that of freedom of thought contained in the First Amendment. Cf. Justice Holmes' dissent in *United States* v. *Schwimmer*, *supra*. We do not reach, however the question whether petitioner was attached to the principles of the Constitution if he believed in denying political and civil rights to persons not members of the Party or of the so-called proletariat, for on the basis of the record before us it has not been clearly

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[23] See Haynes, The Senate of the United States (1938), pp. 11, 96-98, 106-115, 1068-74.

[24] Compare Nebraska's experiment with such a body. Nebraska Constitution, Article III, § 1. See 13 Nebraska Law Bulletin 341.

[24a] E. g., the recall of judicial decisions. See Theodore Roosevelt, A Charter of Democracy, S. Doc. No. 348, 62d Cong., 2d Sess. For proposed constitutional amendments relating to the judiciary and this Court see H. Doc. No. 353, pt. 2, 54th Cong., 2d Sess., pp. 144-64; S. Doc. No. 93, 69th Cong., 1st Sess., pp. 83, 86, 93, 101, 111, 123, 133.

[24b] For an account of the attacks on the veto power see H. Doc. No. 353, pt. 2, 54th Cong., 2d Sess., pp. 129-34.

shown that such denial was a principle of the organizations to which petitioner belonged. Since it is doubtful that this was a principle of those organizations, it is certainly much more speculative whether this was part of petitioner's philosophy. Some of the documents in the record indicate that "class enemies" of the proletariat should be deprived of their political rights.[25] Lenin, however, wrote that this was not necessary to realize the dictatorship of the proletariat.[26] The party's 1928 platform demanded the unrestricted right to organize, to strike and to picket and the unrestricted right of free speech, free press and free assemblage for the working class. The 1928 Program of the Communist International states that the proletarian State will grant religious freedom, while at the same time it will carry on anti-religious propaganda.

We should not hold that petitioner is not attached to the Constitution by reason of his possible belief in the creation of some form of world union of soviet republics unless we are willing so to hold with regard to those who believe in Pan-Americanism, the League of Nations, Union Now, or some other form of international collaboration or collective security which may grow out of the present holocaust. A distinction here would be an invidious one based on the fact that we might agree with or tolerate the latter but dislike or disagree with the former.

If room is allowed, as we think Congress intended, for the free play of ideas, none of the foregoing principles, which might be held to stand forth with sufficient clarity to be imputed to petitioner on the basis of his membership and activity in the League and the Party and his testimony that he subscribed to the principles of those organizations, is enough, whatever our opinion as to their merits, to prove that he was necessarily not attached to

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[25] ABC of Communism; Lenin, State and Revolution; Statutes, Theses and Conditions of Admission to the Communist International; Stalin, Theory and Practice of Leninism; 1928 Program of the Communist International.

[26] "It should be observed that the question of depriving the exploiters of the franchise is purely a Russian question, and not a question of the dictatorship of the proletariat in general. . . . It would be a mistake, however, to guarantee in advance that the impending proletarian revolutions in Europe will all, or for the most part, be necessarily accompanied by the restriction of the franchise for the bourgeoisie. Perhaps they will. After our experience of the war and of the Russian revolution we can say that it will probably be so; but it is not absolutely necessary for the purpose of realizing the dictatorship, it is not an essential symptom of the logical concept 'dictatorship', it does not enter as an essential condition in the historical and class concept 'dictatorship'." Selected Works, vol. VII, pp. 142-3. (Placed in evidence by petitioner.)

the Constitution when he was naturalized. The cumulative effect is no greater.

Apart from the question whether the alleged principles of the Party which petitioner assertedly believed were so fundamentally opposed to the Constitution that he was not attached to its principles in 1927, the Government contends that petitioner was not attached because he believed in the use of force and violence instead of peaceful democratic methods to achieve his desires. In support of this phase of its argument the Government asserts that the organizations with which petitioner was actively affiliated advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence, and that petitioner therefore believed in that method of governmental change.

Apart from his membership in the League and the Party, the record is barren of any conduct or statement on petitioner's part which indicates in the slightest that he believed in and advocated the employment of force and violence, instead of peaceful persuasion, as a means of attaining political ends. To find that he so believed and advocated it is necessary, therefore, to find that such was a principle of the organizations to which he belonged and then impute that principle to him on the basis of his activity in those organizations and his statement that he subscribed to their principles. The Government frankly concedes that "it is normally true . . . that it is unsound to impute to an organization the views expressed in the writings of all its members, or to impute such writings to each member . . ."[27] But the Government contends, however, that it is proper to impute to petitioner certain excerpts from the documents in evidence upon which it particularly relies to show that advocacy of force and violence was a principle of the Communist Party of the United States in 1927, because those documents were official publications carefully supervised by the Party, because of the Party's notorious discipline over its members, and because petitioner was not a mere "rank and file or accidental member of the Party", but "an intelligent and educated individual" who "became a leader of these organizations as an intellectual revolutionary."[28] Since the immediate problem is the determination with certainty of petitioner's beliefs from 1922 to 1927, events and writings since that time have little

[27] Brief, pp. 23-24.

[28] Brief, pp. 25-26.

relevance, and both parties have attempted to confine themselves within the limits of that critical period.

For some time the question whether advocacy of governmental overthrow by force and violence is a principle of the Communist Party of the United States has perplexed courts, administrators, legislators, and students. On varying records in deportation proceedings some courts have held that administrative findings that the Party did so advocate was not so wanting in evidential support as to amount to a denial of due process,[29] others have held to the contrary on different records,[30] and some seem to have taken the position that they will judicially notice that force and violence is a Party principle.[31] This Court has never passed upon the question whether the Party does so advocate, and it is unnecessary for us to do so now.

With commendable candor the Government admits the presence of sharply conflicting views on the issue of force and violence as a Party principle,[32] and it also concedes that "some communist literature in respect of force and violence is susceptible of an interpretation more rhetorical than literal".[33] It insists, however, that excerpts from the documents on which it particularly relies, are enough to show that the trial court's finding that the Communist Party advocated violent overthrow of the Government was not "clearly erroneous", and hence can not be set aside.[34] As previously pointed out, the trial court's findings do not indicate the bases for its conclusions, but the documents published prior to 1927 stressed by the Government, with the pertinent excerpts

[29] In re Saderquist, 11 F. Supp. 525; Skeffington *v.* Katzeff, 277 Fed. 129; United States *v.* Curran, 11 F. 2d 683; Kenmotsu *v.* Nagle, 44 F. 2d 953; Sormunen *v.* Nagle, 59 F. 2d 398; Branch *v.* Cahill, 88 F. 2d 545; Ex parte Vilarino, 50 F. 2d 582; Kjar *v.* Doak, 61 F. 2d 566; Berkman *v.* Tillinghast, 58 F. 2d 621; United States *v.* Smith, 2 F. 2d 90; United States *v.* Wallis, 268 Fed. 413.

[30] Strecker *v.* Kessler, 95 F. 2d 976, 96 F. 2d 1020, affirmed on other grounds, 307 U. S. 22; Ex parte Fierstein, 41 F. 2d 53; Colyer *v.* Skeffington, 265 Fed. 17, reversed *sub nom.* Skeffington *v.* Katzeff, 277 Fed. 129.

[31] United States *ex rel.* Yokinen *v.* Commissioner, 57 F. 2d 797; United States *v.* Perkins, 79 F. 2d 533; United States *ex rel.* Fernandas *v.* Commissioner, 65 F. 2d 593; Ungar *v.* Seaman, 4 F. 2d 80; Ex parte Jurgans, 17 F. 2d 507; United States *ex rel.* Fortmueller *v.* Commissioner, 14 F. Supp. 484; Murdoch *v.* Clark, 53 F. 2d 155; Wolck *v.* Weedin, 58 F. 2d 928.

[32] Brief, p. 66.

[33] Brief, p. 77. See also Colyer *v.* Skeffington, 265 Fed. 17, 59, reversed *sub nom.* Skeffington *v.* Katzeff, 277 Fed. 129. And see Evatt, J., in the King *v.* Hush; Ex parte Devanny, 48 C. L. R. 487, 516-18.

[34] Rule 52(a) of the Rules of Civil Procedure, 28 U. S. C. A., following § 723(c).

noted in the margin, are: The Communist Manifesto of Marx and Engels;[35] The State and Revolution by Lenin;[36] The Statutes,

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[35] The Manifesto was proclaimed in 1848. The edition in evidence was published by the International Publishers in 1932. Petitioner testified that he believed it to be an authorized publication, that he was familiar with the work, that it was used in classes, and that he thought its principles were correct "particularly as they applied to the period in which they were written and the country about which they were written."

The excerpts stressed are: "The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions."

. . . . . .

"Though not in substance, yet in form, the struggle of the proletariat with the bourgeoisie is at first a national struggle. The proletariat of each country must, of course, first of all settle matters with its own bourgeoisie.

"In depicting the most general phases of the development of the proletariat, we traced the more or less veiled civil war, raging within existing society, up to the point where that war breaks out into open revolution, and where the violent overthrow of the bourgeoisie lays the foundation for the sway of the proletariat."

[36] This work was written in 1917 between the February and October Revolutions in Russia. The copy in evidence was published in 1924 by the Daily Worker Publishing Company. Petitioner testified that it was circulated by the Party and that it was probably used in the classes of which he was "educational director".

The excerpts are:

"Fifth, in the same work of Engels, . . . there is also a disquisition on the nature of a violent revolution; and the historical appreciation of its role becomes, with Engels, a veritable panegyric of a revolution by force. This, of course, no one remembers. To talk or even to think of the importance of this idea, is not considered respectable by our modern Socialist parties, and in the daily propaganda and agitation among the masses it plays no part whatever. Yet it is indissolubly bound up with the 'withering away' of the state in one harmonious whole. Here is Engels' argument:

" 'That force also plays another part in history (other than that of a perpetuation of evil), namely a *revolutionary* part; that as Marx says, it is the midwife of every old society when it is pregnant with a new one; that force is the instrument and the means by which social movements hack their way through and break up the dead and fossilized political forms—of all this not a word by Herr Duehring. Duly, with sighs and groans, does he admit the possibility that for the overthrow of the system of exploitation force may, perhaps, be necessary, but most unfortunate if you please, because all use of force, forsooth, demoralizes its user! And this is said in face of the great moral and intellectual advance which has been the result of every victorious revolution! . . . And this turbid, flabby, impotent, parsons' mode of thinking dares offer itself for acceptance to the most revolutionary party history has ever known'."

. . . . . .

"The necessity of systematically fostering among the masses this and only this point of view about violent revolution lies at the root of the whole of Marx's and Engels' teaching, and it is just the neglect of such propaganda and agitation both by the present predominant Social-Chauvinists and the Kautskian schools that brings their betrayal of into prominent relief."

. . . . . .

(Quoting Engels) " 'Revolution is an act in which part of the population forces its will on the other parts by means of rifles, bayonets, cannon, i. e., by most authoritative means. And the conquering party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionaries.' "

Theses and Conditions of Admission to the Communist International;[37] and The Theory and Practice of Leninism, written by Stalin.[38] The Government also sets forth excerpts from other

[37] Petitioner contends that this document was never introduced in evidence, and the record shows only that it was marked for identification. The view we take of the case makes it immaterial whether this document is in evidence or not. The copy furnished us was printed in 1923 under the auspices of the Workers Party. Hynes testified that it was an official publication, but not widely circulated. Petitioner had no recollection of the particular pamphlet and testified that the American party was not bound by it.

The excerpts are:

"That which before the victory of the proletariat seems but a theoretical difference of opinion on the question of 'democracy', becomes inevitably on the morrow of the victory, a question which can only be decided by force of arms."

. . . . . .

"The working class cannot achieve the victory over the bourgeoisie by means of the general strike alone, and by the policy of folded arms. The proletariat must resort to an armed uprising."

. . . . . .

"The elementary means of the struggle of the proletariat against the rule of the bourgeoisie is, first of all, the method of mass demonstrations. Such mass demonstrations are prepared and carried out by the organized masses of the proletariat, under the direction of a united, disciplined, centralized Communist Party. *Civil war is war.* In this war the proletariat must have its efficient political officers, its good political general staff, to conduct operations during all the stages of that fight.

"The mass struggle means a whole system of developing demonstrations growing ever more acute in form, and logically leading to an uprising against the capitalist order of the government. In this warfare of the masses developing into a civil war, the guiding party of the proletariat must, as a general rule, secure every and all lawful positions, making them its auxiliaries in the revolutionary work, and subordinating such positions to the plans of the general campaign, that of the mass struggle."

[38] The copy in evidence was printed by the Daily Worker Publishing Company either in 1924 or 1925. Petitioner was familiar with the work, but not the particular edition, and testified that it was probably circulated by the Party. He had read it, but probably after his naturalization. Hynes and Humphreys testified that it was used in communist classes.

The excerpts are:

"Marx's limitation with regard to the 'continent' has furnished the opportunists and mensheviks of every country with a pretext for asserting that Marx admitted the possibility of a peaceful transformation of bourgeois democracy into proletarian democracy, at least in some countries (England and America). Marx did in fact recognize the possibility of this in the England and America of 1860, where monopolist capitalism and Imperialism did not exist and where militarism and bureaucracy were as yet little developed. But now the situation in these countries is radically different; Imperialism has reached its apogee there, and there militarism and bureaucracy are sovereign. In consequence, Marx's restriction no longer applies."

. . . . . .

"With the Reformist, reform is everything, whilst in revolutionary work it only appears as a form. This is why with the reformist tactic under a bourgeois government, all reform tends inevitably to consolidate the powers that be, and to weaken the revolution.

"With the revolutionary, on the contrary, the main thing is the revolutionary work and not the reform. For him, reform is only an accessory of revolution."

documents which are entitled to little weight because they were published after the critical period.[39]

The bombastic excerpts set forth in Notes 35 to 38 inclusive, upon which the Government particularly relies, lend considerable support to the charge. We do not say that a reasonable man could not possibly have found, as the district court did, that the Communist Party in 1927 actively urged the overthrow of the Government by force and violence.[40] But that is not the issue

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[39] (a) Program of the Communist International, adopted in 1928 and published by the Workers Library Publishers, Inc., in 1929:

"Hence revolution is not only necessary because there is no other way of overthrowing the *ruling* class, but also because, only in the process of revolution is the *overthrowing* class able to purge itself of the dross of the old society and become capable of creating a new society."

Petitioner "agreed with the general theoretical conclusions stated in" this Program, but he regarded "the application of that theory" as "something else".

(b) Programme of the Young Communist International, published in 1929:

"An oppressed class which does not endeavor to possess and learn to handle arms would deserve to be treated as slaves. We would become bourgeois pacifists or opportunists if we forget that we are living in a class society, and that the only way out is through class struggle and the overthrow of the power of the ruling class. Our slogan must be: 'Arming of the proletariat, to conquer, expropriate and disarm the bourgeoisie.' Only after the proletariat has disarmed the bourgeoisie will it be able, without betraying its historic task, to throw all arms on the scrap heap. This the proletariat will undoubtedly do. But only then, and on no account sooner."

(c) Why Communism, written by Olgin, and published first in 1933, by the Workers Library Publishers:

"We Communists say that there is one way to abolish the capitalist State, and that is to smash it by force. To make Communism possible the workers must take hold of the State machinery of capitalism and destroy it."

Petitioner testified that he had not read this book, but that it had been widely circulated by the Party.

[40] Since the district court did not specify upon what evidence its conclusory findings rested, it is well to mention the remaining documents published before 1927 which were introduced into evidence and excerpts from which were read into the record, but upon which the Government does not specifically rely with respect to the issue of force and violence. Those documents are: Lenin, Left Wing Communism, first published in English about 1920; Bucharin and Preobraschensky, ABC of Communism, written in 1919 and published around 1921 in this country (petitioner testified that this was never an accepted work and that its authors were later expelled from the International); International of Youth, a periodical published in 1925; The 4th National Convention of the Workers Party of America, published in 1925; The Second Year of the Workers Party in America (1924); and, The Program and Constitution of the Workers Party of America, circulated around 1924. With the exception of these last two documents, the excerpts read into the record from these publications contain nothing exceptional on the issue of force and violence. The excerpts from the last two documents stress the necessity for Party participation in elections, but declare that the Party fosters no illusions that the workers can vote their way to power, the expulsion of the Socialist members of the New York Assembly (see Chafee, Free Speech in the United States (1941), pp. 269-82) being cited as an example in point. These statements are open to an interpretation of prediction, not advocacy of force and violence. Cf. Note 48, *infra*.

here. We are not concerned with the question whether a reasonable man might so conclude, nor with the narrow issue whether administrative findings to that effect are so lacking in evidentiary support as to amount to a denial of due process. As pointed out before, this as a denaturalization proceeding in which, if the Government is entitled to attack a finding of attachment as we have assumed, the burden rests upon it to prove the alleged lack of attachment by "clear, unequivocal and convincing" evidence. That burden has not been carried. The Government has not proved that petitioner's beliefs on the subject of force and violence were such that he was not attached to the Constitution in 1927.

In the first place this phase of the Government's case is subject to the admitted infirmities of proof by imputation.[41] The difficulties of this method of proof are here increased by the fact that there is, unfortunately, no absolutely accurate test of what a political party's principles are.[42] Political writings are often overexaggerated polemics bearing the imprint of the period and the place in which written.[43] Philosophies cannot generally be studied in *vacuo*. Meaning may be wholly distorted by lifting sentences out of context, instead of construing them as part of an organic whole. Every utterance of party leaders is not taken as party gospel. And we would deny our experience as men if we did not recognize that official party programs are unfortunately often opportunistic devices as much honored in the breach as in the observance.[44] On the basis of the present record we cannot say that the Communist Party is so different in this respect that its principles stand forth with perfect clarity, and especially is this so with relation to the crucial issue of advocacy of force and violence, upon which the Government admits the evidence is sharply conflicting. The presence of this conflict is the second weakness in the Government's chain of proof. It is not eliminated by assiduously adding further excerpts from the documents in evidence to those culled out by the Government.

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41 As Chief Justice (then Mr.) Hughes said in opposing the expulsion of the Socialist members of the New York Assembly: " . . . it is of the essence of the institutions of liberty that it be recognized that guilt is personal and cannot be attributed to the holding of opinion or to mere intent in the absence of overt acts; . . ." Memorial of the Special Committee Appointed by the Association of the Bar of the City of New York, New York Legislative Documents, vol. 5, 143d Session (1920), No. 30, p. 4.

42 See Chafee, Free Speech in the United States (1941), pp. 219-24.

43 See Note 33, *ante*.

44 See Bryce, the American Commonwealth (1915) vol. II, p. 334; III Encyclopedia of the Social Sciences, p. 164.

The reality of the conflict in the record before us can be pointed out quickly. Of the relevant prior to 1927 documents relied upon by the Government three are writings of outstanding Marxist philosophers, and leaders, the fourth is a world program.[45] The Manifesto of 1848 was proclaimed in an autocratic Europe engaged in suppressing the abortive liberal revolutions of that year. With this background, its tone is not surprising.[46] Its authors later stated, however, that there were certain countries, "such as the United States and England in which the workers may hope to secure their ends by peaceful means."[47] Lenin doubted this in his militant work, The State and Revolution, but this was written on the eve of the Bolshevist revolution in Russia and may be interpreted as intended in part to justify the Bolshevist course and refute the anarchists and social democrats.[48] Stalin declared that Marx's exemption for the United States and England was no longer valid.[49] He wrote, however, that "the proposition that the prestige of the Party can be built upon violence . . . is absurd and absolutely incompatible with Leninism."[50] And Lenin wrote "In order to obtain the power of the state the class conscious workers must win the majority to their side. As long as no violence is used against the masses, there is no other road to power. We are not Blanquists, we are not in favor of the seizure of power by a minority."[51] The 1938 Constitution of the Com-

[45] See Notes 35 to 38 inclusive, *ante*.

[46] Petitioner testified that he believed its principles, particularly as they applied to the period and country in which written. See Note 35, *ante*.

[47] Marx, Amsterdam Speech of 1872; see also Engels' preface to the First English Translation of Capital (1886).

[48] Lenin's remarks on England have been interpreted as simply predicting, not advocating, the use of violence there. See the introduction to Strachey, The Coming Struggle for Power (1935).

[49] See Note 38, *ante*.

[50] Stalin, Leninism, vol. I, pp. 282-83. Put in evidence by petitioner.

[51] Lenin, Selected Works, vol. VI. Put in evidence by petitioner. In the same work is the following:

"Marxism is an extremely profound and many sided doctrine. It is, therefore, not surprising that *scraps* of quotations from Marx—especially when the quotations are *not* to the point—can always be found among the 'arguments' of those who are breaking with Marxism. A military conspiracy is Blanquism *if* it is not organized by the party of a definite class; *if* its organizers have not reckoned with the political situation in general and the international situation in particular; *if* the party in question does not enjoy the sympathy of the majority of the people, as proved by definite facts; *if* the development of events in the revolution has not led to the virtual dissipation of the illusions of compromise entertained by the petty bourgeoisie; *if* the majority of the organs of the revolutionary struggle which are recognized to be 'authoritative' or have otherwise established themselves, such as the Soviets,

munist Party of the United States, which petitioner claimed to be the first and only written constitution ever officially adopted by the Party and which he asserted enunciated the principles of the Party as he understood them from the beginning of his membership, ostensibly eschews resort to force and violence as an element of Party tactics.[52]

A tenable conclusion from the foregoing is that the Party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional or peaceful channels were no longer open.

There is a material difference between agitation and exhortation calling for present violent action which creates a clear and present danger of public disorder or other substantive evil, and mere doctrinal justification or prediction of the use of force under hypothetical conditions at some indefinite future time—prediction that is not calculated or intended to be presently acted upon, thus leaving opportunity for general discussion and the calm processes of thought and reason. Cf. *Bridges* v. *California*, 314 U. S. 252, and Justice Brandeis' concurring opinion in *Whitney* v. *California*, 274 U. S. 357, 372-80. See also *Taylor* v. *Mississippi*, — U. S. —, Nos. 826-828 this term. Because of this difference we may assume that Congress intended, by the general test of "attachment" in the 1906 Act, to deny naturalization to

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have not been won over; *if* in the army (in time of war) sentiments hostile to a government which drags out an unjust war against the will of the people have not become fully matured; *if* the slogans of the insurrection (such as 'All power to the Soviets,' 'Land to the peasants,' 'Immediate proposal of a democratic peace to all the belligerent peoples, coupled with the immediate abrogation of all secret treaties and secret diplomacy,' etc.) have not acquired the widest renown and popularity; *if* the advanced workers are not convinced of the desperate situation of the masses and of the support of the countryside, as demonstrated by an energetic peasant movement, or by a revolt against the landlords and against the government that defends the landlords; *if* the economic situation in the country offers any real hope of a favorable solution of the crisis by peaceful and parliamentary means."

[52] Article X, Section 5. Party members found to be strike-breakers, degenerates, habitual drunkards, betrayers of Party confidence, provocateurs, advocates of terrorism and violence as a method of Party procedure, or members whose actions are detrimental to the Party and the working class, shall be summarily dismissed from positions of responsibility, expelled from the Party and exposed before the general public.

persons falling into the first category but not to those in the second. Such a construction of the statute is to be favored because it preserves for novitiates as well as citizens the full benefit of that freedom of thought which is a fundamental feature of our political institutions. Under the conflicting evidence in this case we cannot say that the Government has proved by such a preponderance of the evidence that the issue is not in doubt, that the attitude of the Communist Party of the United States in 1927 towards force and violence was not susceptible of classification in the second category. Petitioner testified that he subscribed to this interpretation of Party principles when he was naturalized, and nothing in his conduct is inconsistent with that testimony. We conclude that the Government has not carried its burden of proving by "clear, unequivocal, and convincing" evidence which does not leave "the issue in doubt", that petitioner obtained his citizenship illegally. In so holding we do not decide what interpretation of the Party's attitude toward force and violence is the most probable on the basis of the present record, or that petitioner's testimony is acceptable at face value. We hold only that where two interpretations of an organization's program are possible, the one reprehensible and a bar to naturalization and the other permissible, a court in a denaturalization proceeding, assuming that it can re-examine a finding of attachment upon a charge of illegal procurement, is not justified in canceling a certificate of citizenship by imputing the reprehensible interpretation to a member of the organization in the absence of overt acts indicating that such was his interpretation. So uncertain a chain of proof does not add up to the requisite "clear, unequivocal, and convincing" evidence for setting aside a naturalization decree. Were the law otherwise, valuable rights would rest upon a slender reed, and the security of the status of our naturalized citizens might depend in considerable degree upon the political temper of majority thought and the stresses of the times. Those are consequences foreign to the best traditions of this nation and the characteristics of our institutions.

II

This disposes of the issues framed by the Government's complaint which are here pressed. As additional reasons for its conclusion that petitioner's naturalization was fraudulently and illegally procured the district court found however that petitioner

was a disbeliever in, and a member of an organization teaching disbelief in organized government,[53] and that his oath of allegiance, required by 8 U. S. C. § 381, was false. These issues are outside the scope of the complaint,[54] as is another ground urged in support of the judgment below as to which the district court made no findings.[55] Because they are outside the scope of the complaint, we do not consider them. As we said in *De Jonge* v. *Oregon*, "Conviction upon a charge not made would be sheer denial of due process." 299 U. S. 353, 362. A denaturalization suit is not a criminal proceeding. But neither is it an ordinary civil action since it involves an important adjudication of status. Consequently we think the Government should be limited, as in a criminal proceeding, to the matters charged in its complaint.

One other ground advanced in support of the judgment below was not considered by the lower courts and does not merit detailed treatment. It is that petitioner was not entitled to naturalization because he was deportable in 1927 under the Immigration Act of 1918 (40 Stat. 1012, as amended by 41 Stat. 1008; 8 U. S. C. § 137) as an alien member of an organization advocating overthrow of the Government of the United States by force and violence. This issue is answered by our prior discussion of the evidence in this record relating to force and violence. Assuming that deportability at the time of naturalization satisfies the

[53] In 1927 naturalization was forbidden to such persons by § 7 of the Act of 1906, 34 Stat. 598, 8 U. S. C. § 364. Compare § 305 of the Nationality Act of 1940, 54 Stat. 1141, 8 U. S. C. § 705.

[54] The complaint did incorporate by reference an affidavit of cause, required by 8 U. S. C. § 405, in which the affiant averred that petitioner's naturalization was illegally and fraudulently obtained in that he did not behave as a man, and was not a man attached to the Constitution but was a member of the Communist Party which was opposed to the Government and advocated its overthrow by force and violence, and in that: "At the time he took oath of allegiance, he did not in fact intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same".

While this affidavit is part of the complaint, we think it was not intended to be an additional charge, but was included only to show compliance with the statute. The attachment averment of the affidavit is elaborated and set forth as a specific charge in the complaint. The failure to do likewise with the averment of a false oath is persuasive that the issue was not intended to be raised. When petitioner moved for a non-suit at the close of the Government's case, the United States attorney did not contend, in stating what he conceived the issues were, that the question of a false oath was an issue.

[55] This contention is that petitioner was not well disposed to the good order and happiness of the United States because he believed in and advocated general resort to illegal action, other than force and violence, as a means of achieving political ends.

requirement of illegality under § 15 which governs this proceeding, the same failure to establish adequately the attitude toward force and violence of the organizations to which petitioner belonged forbids his denaturalization on the ground of membership.

The judgment is reversed and the cause remanded to the Circuit Court of Appeals for further proceedings in conformity with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES.

No. 2.—October Term, 1942.

William Schneiderman, Petitioner, vs. The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[June 21, 1943.]

Mr. Justice Douglas, concurring.

I join in the Court's opinion and agree that petitioner's want of attachment in 1927 to the principles of the Constitution has not been shown by "clear, unequivocal and convincing" evidence. The United States, when it seeks to deprive a person of his American citizenship, carries a heavy burden of showing that he procured it unlawfully. That burden has not been sustained on the present record, as the opinion of the Court makes plain, unless the most extreme views within petitioner's party are to be imputed or attributed to him and unless all doubts which may exist concerning his beliefs in 1927 are to be resolved against him rather than in his favor. But there is another view of the problem raised by this type of case which is so basic as to merit separate statement.

Sec. 15 of the Naturalization Act gives the United States the power and duty to institute actions to set aside and cancel certificates of citizenship on the ground of "fraud" or on the ground that they were "illegally procured". Sec. 15 "makes nothing fraudulent or unlawful that was honest and lawful when it was done. It imposes no new penalty upon the wrongdoer. But if, after fair hearing, it is judicially determined that by wrongful conduct he has obtained a title to citizenship, the act provides that he shall be deprived of a privilege that was never rightfully his." *Johannessen* v. *United States*, 225 U. S. 227, 242-243. And *see Luria* v. *United States*, 231 U. S. 9, 24. "Wrongful conduct" —like the statutory words "fraud" or "illegally procured"—are strong words. Fraud connotes perjury, concealment, falsification, misrepresentation or the like. But a certificate is illegally, as distinguished from fraudulently, procured when it is obtained without compliance with a "condition precedent to the authority

of the Court to grant a petition for naturalization." *Maney* v. *United States*, 278 U. S. 17, 22.

Under the Act in question, as under earlier and later Acts,[1] Congress prescribed numerous conditions precedent to the issuance of a certificate. They included the requirement that the applicant not be an anarchist or polygamist (§ 7), the presentation of a certificate of arrival (*United States* v. *Ness*, 245 U. S. 319), the requirement that the final hearing be had in open court (*United States* v. *Ginsberg*, 243 U. S. 472), the residence requirement (R. S. § 2170), the general requirement that the applicant be able to speak the English language (§ 8), etc. The foregoing are illustrative of one type of condition which Congress specified. Another type is illustrated by the required finding of attachment. Sec. 4, as it then read, stated that it "shall be made to appear to the satisfaction of the court" that the applicant "has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same."[2] It is my view that Congress by that provision made the finding the condition precedent, not the weight of the evidence underlying the finding. Such a finding can of course be set aside under § 15 on grounds of fraud. But so far as certificates "illegally procured" are concerned, this Court has heretofore permitted § 15 to be used merely to enforce the express conditions specified in the Act. It is of course true that an applicant for citizenship was required to come forward and make the showing necessary for the required findings. § 4. But under this earlier Act, it was not that showing but the finding of the court which Congress expressed in the form of a condition. If § 15 should be broadened by judicial construction to permit the findings of attachment to be set aside for reasons other than fraud, then the issue of illegality would be made to turn not on the judge being satisfied as to applicant's attachment but on the evidence underlying that finding. Such a condition should not be readily implied.

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[1] For the Act in its present form see 8 U. S. C. § 501 *et seq.*

[2] This provision was recast by the Act of March 2, 1929, 45 Stat. 1512, 1514, 8 U. S. C. (1927) § 381, into substantially its present form. For the legislative history see 69 Cong. Rec. 441; 8 Rep. No. 1054, 70th Cong., 1st Sess. The provision now reads: "No person except as hereinafter provided in this chapter shall be naturalized unless such petitioner . . . (3) during all the periods referred to in this subsection has been and is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

If an anarchist is naturalized, the United States may bring an action under § 15 to set aside the certificate on the grounds of illegality. Since Congress by § 7 of the Act forbids the naturalization of anarchists, the alien anarchist who obtains the certificate has procured it illegally whatever the naturalization court might find. The same would be true of communists if Congress declared they should be ineligible for citizenship. Then proof that one was not a communist and did not adhere to that party or its belief would become like the other express conditions in the Act a so-called "jurisdictional" fact "upon which the grant is predicated." *Johannessen* v. *United States, supra*, p. 240. But under this Act Congress did not treat communists like anarchists. Neither the statute nor the official forms used by applicants called for an expression by petitioner of his attitude on, or his relationship to, communism, or any other foreign political creed except anarchy and the like.

The findings of attachment are entrusted to the naturalization court with only the most general standard to guide it. That court has before it, however, not only the applicant but at least two witnesses. It makes its appraisal of the applicant and it weighs the evidence. Its conclusion must often rest on imponderable factors. In the present case we do not know how far the naturalization court probed into petitioner's political beliefs and affiliations. We do not know what inquiry it made. All we do know is that it was satisfied that petitioner was "attached to the principles of the Constitution of the United States." But we must assume that that finding which underlies the judgment granting citizenship (*Cf. Tutun* v. *United States*, 270 U. S. 568) was supported by evidence. We must assume that the evidence embraced all relevant facts since no charge of concealment or misrepresentation is now made by respondent. And we must assume that the applicant and the judge both acted in utmost good faith.

If the applicant answers all questions required of him, if there is no concealment or misrepresentation, the findings of attachment cannot be set aside on the grounds of illegality in proceedings under § 15. It does not comport with any accepted notion of illegality to say that in spite of the utmost good faith on the part of applicant and judge and in spite of full compliance with the express statutory conditions a certificate was illegally procured because another judge would appraise the evidence differently.

That would mean that the United States at any time could obtain a trial *de novo* on the political faith of the applicant.

It is hardly conceivable that Congress intended that result under this earlier Act except for the narrow group of political creeds such as anarchy for which it specially provided. Chief Justice Hughes stated in his dissent in *United States* v. *Macintosh*, 283 U. S. 605, 635, that the phrase "attachment to the principles of the Constitution" is a general one "which should be construed, not in opposition to, but in accord with, the theory and practice of our Government in relation to freedom of conscience." We should be mindful of that criterion in our construction of § 15. If findings of attachment which underly certificates may be set aside years later on the evidence, then the citizenship of those whose political faiths become unpopular with the passage of time becomes vulnerable. It is one thing to agree that Congress could take that step if it chose. See *Turner* v. *Williams*, 194 U. S. 279. But where it has not done so in plain words, we should be loathe to imply that Congress sanctioned a procedure which in absence of fraud permitted a man's citizenship to be attacked years after the grant because of his political beliefs, social philosophy, or economic theories. We should not tread so close to the domain of freedom of conscience without an explicit mandate from those who specify the conditions on which citizenship is granted to or withheld from aliens. At least when two interpretations of the Naturalization Act are possible we should choose the one which is the more hospitable to that ideal for which American citizenship itself stands.

Citizenship can be granted only on the basis of the statutory right which Congress has created. *Tutun* v. *United States, supra.* But where it is granted and where all the express statutory conditions precedent are satisfied we should adhere to the view that the judgment of naturalization is final and conclusive except for fraud. Since the United States does not now contend that fraud vitiates this certificate the judgment below must be reversed.

SUPREME COURT OF THE UNITED STATES.

No. 2.—October Term, 1942.

William Schneiderman, Petitioner, *vs.* The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[June 21, 1943.]

Mr. Justice Rutledge, concurring.

I join in the Court's opinion. I add what follows only to emphasize what I think is at the bottom of this case.

Immediately we are concerned with only one man, William Schneiderman. Actually, though indirectly, the decision affects millions. If, seventeen years after a federal court adjudged him entitled to be a citizen, that judgment can be nullified and he can be stripped of this most precious right, by nothing more than reexamination upon the merits of the very facts the judgment established, no naturalized person's citizenship is or can be secure. If this can be done after that length of time, it can be done after thirty or fifty years. If it can be done for Schneiderman, it can be done for thousands or tens of thousands of others.

For all that would be needed would be to produce some evidence from which any one of the federal district judges could draw a conclusion, concerning one of the ultimate facts in issue, opposite from that drawn by the judge decreeing admission. The statute does not in terms prescribe "jurisdictional" facts.[1] But all of the important ones are "jurisdictional," or have that effect, if by merely drawing contrary conclusion from the same, though conflicting, evidence at any later time a court can overturn the judgment. An applicant might be admitted today upon evidence satisfying the court he had complied with all requirements. That judgment might be affirmed on appeal and again on certiorari here. Yet the day after, or ten years later, any district judge could overthrow it, on the same evidence, if it was conflicting or gave room for contrary inferences, or on different

[1] Cf., however, the concurring opinion of Mr. Justice Douglas.

evidence all of which might have been presented to the first court.[2]

If this is the law and the right the naturalized citizen acquires, his admission creates nothing more than citizenship in attenuated, if not suspended, animation. He acquires but prima facie status, if that. Until the Government moves to cancel his certificate and he knows the outcome, he cannot know whether he is in or out. And when that is done, nothing forbids repeating the harrowing process again and again, unless the weariness of the courts should lead them finally to speak *res judicata.*

No citizen with such a threat hanging over his head could be free. If he belonged to "off-color" organizations or held too radical or, perhaps, too reactionary views, for some segment of the judicial palate, when his admission took place, he could not open his mouth without fear his words would be held against him. For whatever he might say or whatever any such organization might advocate could be hauled forth at any time to show "continuity" of belief from the day of his admission, or "concealment" at that time. Such a citizen would not be admitted to liberty. His best course would be silence or hypocrisy. This is not citizenship. Nor is it adjudication.

It may be doubted that the framers of the Constitution intended to create two classes of citizens, one free and independent, one haltered with a lifetime string tied to its status. However that may be, and conceding that the power to revoke exists and rightly should exist to some extent, the question remains whether the power to admit can be delegated to the courts in such a way that their determination, once made, determines and concludes nothing with finality.

If every fact in issue, going to the right to be a citizen, can be reexamined, upon the same or different proof, years or decades later; and if this can be done *de novo*, as if no judgment had been entered, whether with respect to the burden of proof required to reach a different decision or otherwise, what does the judgment determine? What does it settle with finality? If review is had and the admission is affirmed, what fact is adjudicated, if next day any or all involved can be redecided to the contrary? Can Congress, when it has empowered a court to determine and others to review and confirm, at the same time or

[2] There is no requirement that the evidence be different from what was presented on admission or "newly discovered."

later authorize any trial court to overturn their decrees, for causes other than such as have been held sufficient to overturn other decrees?[3]

I do not undertake now to decide these questions. Nor does the Court. But they have a bearing on the one which is decided. It is a *judgment* which is being attacked. *Tutun* v. *United States,* 270 U. S. 568. Accordingly, it will not do to say the issue is identical with what is presented in a naturalization proceeding, is merely one of fact, upon which therefore the finding of the trial court concludes, and consequently we have no business to speak or our speaking is appellate intermeddling. That ignores the vital fact that it is *a judgment,* rendered in the exercise of the judicial power created by Article III, which it is sought to overthrow,[4] not merely a grant like a patent to land or for invention.[5] Congress has plenary power over naturalization. That no one disputes. Nor that this power, for its application, can be delegated to the courts. But this is not to say, when Congress has so placed it, that body can decree in the same breath that the judgment rendered shall have no conclusive effect. Limits it may place. But that is another matter from making an adjudication under Article III merely an advisory opinion or prima facie evidence of the fact or all the facts determined. Congress has, with limited exceptions, plenary power over the jurisdiction of the federal courts.[6] But to confer the jurisdiction and at the same time nullify entirely the effects of its exercise are not matters heretofore thought, when squarely faced, within its authority.[7] To say therefore that the trial court's function in this case is the same as was that of the admitting court is to ignore the vast difference between overturning a judgment, with its adjudicated facts, and deciding initially upon facts which have not been adjudged. The argument made from the deportation statutes likewise ignores this difference.

It is no answer to say that Congress provided for the redetermination as a part of the statute conferring the right to admis-

[3] Cf. United States v. Throckmorton, 98 U. S. 61; Kibbe v. Benson, 17 Wall. 624. No such cause for cancellation is involved here.

[4] Tutun v. United States, 270 U. S. 568.

[5] Cf. Johannessen v. United States, 225 U. S. 227.

[6] Cf. Lockerty v. Phillips, No. 934, October Term. 1942.

[7] Cf. United States v. Ferreira, 13 How. 40; Gordon v. United States, 2 Wall. 561; *Id.*, 117 U. S. 697; United States v. Jones, 119 U. S. 477; Pocono Pines Assembly Hotels Co. v. United States, 73 Ct. Cl. 447; 76 Ct. Cl. 334; Ex parte Pocono Pines Assembly Hotels Co., 285 U. S. 526.

sion and therefore as a condition of it. For that too ignores the question whether Congress can so condition the judgment and is but another way of saying that a determination, made by an exercise of judicial power under Article III, can be conditioned by legislative mandate so as not to determine finally any ultimate fact in issue.

The effect of cancellation is to nullify the judgment of admission. If it is a judgment, and no one disputes that it is, that quality in itself requires the burden of proof the court has held that Congress intended in order to overturn it. That it is a judgment, and one of at least a coordinate court, which the cancellation proceeding attacks and seeks to overthrow, requires this much at least, that solemn decrees may not be lightly overturned and that citizens may not be deprived of their status merely because one judge views their political and other beliefs with a more critical eye or a different slant, however honestly and sincerely, than another. Beyond this we need not go now in decision. But we do not go beyond our function or usurp another tribunal's when we go this far. The danger, implicit in finding too easily the purpose of Congress to denaturalize Communists, is that by doing so the status of all or many other naturalized citizens may be put in jeopardy. The other and underlying questions need not be determined unless or until necessity compels it.

SUPREME COURT OF THE UNITED STATES.

No. 2.—October Term, 1942.

William Schneiderman, Petitioner, vs. The United States of America. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[June 21, 1943.]

Mr. Chief Justice Stone, dissenting.

The two courts below have found that petitioner, at the time he was naturalized, belonged to Communist Party organizations which were opposed to the principles of the Constitution, and which advised, advocated and taught the overthrow of the Government by force and violence. They have found that petitioner believed in and supported the principles of those organizations. They have found also that petitioner "was not, at the time of his naturalization . . . , and during the period of five years immediately preceding the filing of his petition for naturalization had not behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same".

I think these findings are abundantly supported by the evidence, and hence that it is not within our judicial competence to set them aside—even though, sitting as trial judges, we might have made some other finding. The judgment below, cancelling petitioner's citizenship on the ground that it was illegally obtained, should therefore be affirmed. The finality which attaches to the trial court's determinations of fact from evidence heard in open court, and which ordinarily saves them from an appellate court's intermeddling, should not be remembered in every case save this one alone.

It is important to emphasize that the question for decision is much simpler than it has been made to appear. It is whether petitioner, in securing his citizenship by naturalization, has fulfilled a condition which Congress has imposed on every applicant for naturalization—that during the five years preceding his application "he has behaved as a man . . . attached to the principles of the Constitution of the United States, and well disposed to the good

order and happiness of the same."[1] Decision whether he was lawfully entitled to the citizenship which he procured, and consequently whether he is now entitled to retain it, must turn on the existence of his attachment to the principles of the Constitution when he applied for citizenship, and that must be inferred by the trier of fact from his conduct during the five-year period. We must decide not whether the district court was compelled to find want of attachment, but whether the record warrants such a finding.

The question then is not of petitioner's opinions or beliefs—save as they may have influenced or may explain his conduct showing attachment, or want of it, to the principles of the Constitution. It is not a question of freedom of thought, of speech or of opinion, or of present imminent danger to the United States from our acceptance as citizens of those who are not attached to the principles of our form of government. The case obviously has nothing to do with our relations with Russia, where petitioner was born, or with our past or present views of the Russian political or social system. The United States has the same interest as other nations in demanding of those who seek its citizenship some measure of attachment to its institutions. Our concern is only that the declared will of Congress shall prevail—that no man shall become a citizen or retain his citizenship whose behavior for five years before his application does not show attachment to the principles of the Constitution.

The Constitution has conferred on Congress the exclusive authority to prescribe uniform rules governing naturalization. Article I, § 8, cl. 4. Congress has exercised that power by prescribing the conditions, in conformity to which aliens may obtain the privilege of citizenship. Under the laws and Constitution of the United States, no person is given any right to demand citizenship, save upon compliance with those conditions. "An alien who seeks political rights as a member of this Nation can rightfully obtain

[1] By § 4 of the Act of June 29, 1906, 34 Stat. 598, it is provided:
"Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record."

them only upon terms and conditions specified by Congress. Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in respect of a matter so vital to the public welfare." *United States* v. *Ginsberg*, 243 U. S. 472, 474. And whenever a person's right to citizenship is drawn in question, it is the judge's duty loyally to see to it that those conditions have not been disregarded.

The present suit by the United States, to cancel petitioner's previously granted certificate of citizenship, was brought pursuant to an Act of Congress (Section 15 of the Act of June 29, 1906, 34 Stat. 601), enacted long prior to petitioner's naturalization. Section 15 authorizes any court by a suit instituted by the United States Attorney to set aside a certificate of naturalization "on the ground of fraud or on the ground that such certificate of citizenship was illegally procured". Until now this Court, without a dissenting voice, has many times held that in a suit under this statute it is the duty of the court to render a judgment cancelling the certificate of naturalization if the court finds upon evidence that the applicant did not satisfy the conditions which Congress had made prerequisite to the award of citizenship. *Johannessen* v. *United States*, 225 U. S. 227; *Luria* v. *United States*, 231 U. S. 9; *Maibaum* v. *United States*, 232 U. S. 714; *United States* v. *Ginsberg*, 243 U. S. 472; *United States* v. *Ness*, 245 U. S. 319; *Maney* v. *United States*, 278 U. S. 17, 23; *Schwinn* v. *United States*, 311 U. S. 616.

Provision for such a review of the judgment awarding citizenship is within the legislative power of Congress and plainly is subject to no constitutional infirmity. *Johannessen* v. *United States*, *supra*, 236-40, especially where, as here, the statute antedated petitioner's citizenship and the review was thus a condition of its award. *Luria* v. *United States*, *supra*, 24. Our decisions have uniformly recognized that Congress, which has power to deny citizenship to aliens altogether, may safeguard the grant of this privilege, precious to the individual and vital to the country's welfare, by such procedure for determining the existence of indispensable requisites to citizenship as has been established in § 15. "No alien has the slightest right to naturalization unless all statutory requirements are complied with, and every certificate of citizenship must be treated as granted upon condition that the Government may challenge it as provided in § 15 and demand its cancellation unless issued in accordance with such requirements. If procured when prescribed qualifications have no exis-

tence in fact it is illegally procured; a manifest mistake by the judge cannot supply these nor render their existence non-essential." *United States* v. *Ginsberg*, *supra*. 475. Speaking for a unanimous Court, Mr. Justice Brandeis thus stated what was, until today, the settled law: "If a certificate is procured when the prescribed qualifications have no existence in fact, it may be cancelled by suit." *Tutun* v. *United States*, 270 U. S. 568, 578. Congress has not seen fit to interpose any statute of limitations. And there is no suggestion that the Government was derelict in not bringing the suit earlier or that petitioner has been prejudiced by delay. Hence the issue before us is whether petitioner, when naturalized, satisfied the statutory requirements. It is the same issue as would be presented by an appeal from a judgment granting or denying naturalization upon the evidence here presented, although it may be assumed that in this proceeding the burden of proof rests on the Government, which has brought the suit, to establish petitioner's want of qualifications.

We need not stop to consider whether petitioner's failure, in his naturalization proceeding, to disclose facts which could have resulted in a denial of his application, constituted fraud within the meaning of the statute. For present purposes it is enough that the evidence supports the conclusion of the courts below as to petitioner's want of attachment to the principles of the Constitution, and that § 15 has, ever since its enactment in 1906, been construed by this Court as requiring certificates of citizenship to be cancelled as illegally procured whenever the court finds on evidence that at the time of naturalization the applicant did not in fact satisfy the statutory prerequisites.

To meet the exigencies of this case, it is now for the first time proposed by the concurring opinion of Mr. Justice Douglas that a new construction be given to the statute which would preclude any inquiry concerning the fact of petitioner's attachment to the Constitution. It is said that in a § 15 proceeding the only inquiry permitted, apart from fraud, is as to the regularity of the naturalization proceedings on their face; that—however much petitioner fell short of meeting the statutory requirements for citizenship—if he filed as he did, pro forma affidavits of two persons merely stating that to the best of their knowledge petitioner was of good moral character and attached to the principles of the Constitution, and if the court on the basis of the affidavits made the requisite findings and entered them, all further inquiry is foreclosed.

To this easy proposal for the emasculation of the statute there are several plain and obvious answers.

Section 15 authorizes and directs the Government to institute the suit to cancel the certificate of naturalization on the ground of fraud or on the ground that the certificate was illegally procured. Until now it has never been thought that a certificate of citizenship procured by one who has not satisfied the statutory conditions for citizenship, is nevertheless lawfully procured. But the concurring opinion of Mr. Justice Douglas suggests that, for purposes of § 15, "attachment to the principles of the Constitution" is not a condition of becoming a citizen. It suggests that the statute is satisfied, even though the applicant was never in fact attached to the principles of the Constitution, so long as such attachment was made to appear, from pro forma affidavits, to the satisfaction of the naturalization court. This is said to be the case regardless of whether in fact the affidavits, and the certificate of citizenship based on them, are wholly mistaken, and despite the fact that the naturalization proceeding, as apparently it was here, is an ex parte proceeding in which the Government is not represented.

It would seem passing strange that Congress—which authorized cancellation of citizenship under § 15 for failure to hold the naturalization hearing in open court instead of in the judge's chambers (*United States* v. *Ginsberg, supra*), or for failure to present the requisite certificate of arrival in this country (*Maney* v. *United States, supra*)—should be thought less concerned with the applicant's attachment to the principles of the Constitution and that he be well disposed to the good order and happiness of the United States. For what could be more important in the selection of citizens of the United States than that the prospective citizen be attached to the principles of the Constitution?

Moreover, if in the absence of fraud the finding of the naturalization court in this case is final and hence beyond the reach of a § 15 proceeding, it would be equally final in the case of a finding, contrary to the actual fact, that the applicant had been for five years a continuous resident in the United States, since that requirement too is set forth in the sentence of § 4 which provides that "it shall be made to appear to the satisfaction of the court". Yet it is settled that a certificate of citizenship based on a mistaken finding of five years residence is subject to revocation. *United States* v. *Ginsberg, supra.* And in *Schwinn* v. *United States, supra,* it appeared, from extrinsic evidence first offered in a § 15 proceeding, that the witnesses at the naturalization hearing had been mistaken as to the length of time they had known the applicant, and that for a part of the five-year period no witness had been pro-

duced with actual knowledge of the applicant's residence or qualifications. We held, without dissent, 311 U. S. 616, "that the certificate of citizenship was illegally procured", and for that reason we affirmed a judgment cancelling it.[2] If we are to give effect to the language and purpose of Congress, it would seem that we must reach the same result in the case of the naturalization court's mistaken or unwarranted finding of attachment to the principles of the Constitution, even though the conduct of the applicant and his witnesses at the naturalization hearing fell short of perjury.

The purpose of §15—like that of § 11, which authorizes the Government to appear in a naturalization proceeding to contest the application—is not merely to insure the formal regularity of the proceeding, but to protect the United States from the injury which would result from the acceptance as citizens of any who are not lawfully entitled to become citizens. Congress left the naturalization proceeding simple and inexpensive, by permitting it ordinarily to be conducted ex parte. Thus approximately 200,000 certificates of naturalization were issued during the year in which petitioner became a citizen. Annual Report of the Secretary of Labor, 1940, p. 115. But by § 15 Congress afforded the Government an independent opportunity to inquire into any naturalization if upon later scrutiny it appeared that the certificate of citizenship had not been lawfully procured. As the Court declared in *United States* v. *Ness, supra*, 327, "§ 11 and § 15 were designed to afford cumulative protection against fraudulent or illegal naturalization". All this was made abundantly clear by decisions of this Court more than twenty-five years ago. See *Johannessen* v. *United States, supra; Luria* v. *United States, supra; United States* v. *Ginsberg, supra; United States* v. *Ness, supra*, 325-27. In the intervening years Congress has often revised the naturalization laws, but it has not thought it appropriate to modify this Court's interpretation of the function of § 15 in the naturalization procedure.

This is persuasive that the interpretation of § 15 now proposed defies the purpose and will of Congress. It is inconceivable that Congress should have intended that a naturalized citizen's attachment to the principles of the Constitution—the most fundamental requirement for citizenship—should be the one issue which,

[2] The district court's decision was based on both fraud and illegality. The circuit court of appeals relied upon fraud alone, 112 F. 2d 74, but our affirmance was rested "on the sole ground" of illegality.

in the absence of fraud, the Government is foreclosed from examining. To limit the Government to proof of fraud in such cases is to read "illegality" out of the statute in every instance where an alien demonstrably not attached to the principles of the Constitution has procured a certificate of citizenship. Even if we were to recast an Act of Congress in accordance with our own notions of policy, it would be difficult to discover any considerations warranting the adoption of a device whose only effect would be to make certain that persons never entitled to the benefits of citizenship could secure and retain them. That could not have been the object of Congress in enacting § 15.

As we are not here considering whether petitioner's certificate of naturalization was procured by fraud, there is no occasion, and indeed no justification, for importing into this case the rule, derived from land fraud cases, that fraud, which involves personal moral obliquity, must be proved by clear and convincing evidence. The issue is not whether petitioner committed a crime but whether he should be permitted to enjoy citizenship when he has never satisfied the basic conditions which Congress required for the grant of that privilege. We are concerned only with the question whether petitioner's qualifications were so lacking that he was not lawfully entitled to the privilege of citizenship which he has procured. There is nothing in § 15, nor in any of our numerous decisions under it, to suggest that such an issue is to be tried as fraud is tried, or that it is not to be resolved, as are other cases, by the weight of evidence. No plausible reason has been advanced why it should not be. But the point need not be labored, for no matter how it is determined it can give no aid or comfort to petitioner. The evidence in this case to which I shall refer and on which the courts below were entitled to rely is clear, not speculative; and since petitioner himself has not challenged it, the trial court was entitled to accept it as convincing, which it evidently did.

The statute does not, as seems to be suggested, require as a condition of citizenship that a man merely be capable of attachment to the principles of the Constitution—a requirement which would presumably embrace all mankind. It requires instead that the applicant be in fact attached to those principles when he seeks naturalization, and § 15 makes provision for the Government to institute an independent suit, subsequent to naturalization, to inquire whether that condition was then in fact fulfilled. Con-

gress has exhibited no interest in petitioner's capabilities. Nor did Congress require only that it be not impossible for petitioner to have an attachment to the principles of the Constitution. The Act specifies the fact of attachment as the test, requiring this to be affirmatively shown by the applicant; and by § 15 Congress provided a means for the United States to ascertain that fact by a judicial determination.

The prescribed conditions for the award of citizenship by naturalization are few and readily understood, and we must accept them as the expression of the Congressional judgment that aliens not satisfying those requirements are not worthy to be admitted to the privilege of citizenship. Congress has declared that before one is entitled to that privilege he must take the oath of allegiance "that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same". Act of June 29, 1906, § 4 (Third), 34 Stat. 597. And as I have said, the applicant must make it appear to the court admitting him to citizenship that for the five years preceding the date of his application he has resided continuously within the United States and "that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same."

Moreover, at the time of petitioner's naturalization, the statutes of the United States excluded from admission into this country "aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States . . . ". Act of October 16, 1918, § 1, 40 Stat. 1012, as amended by subsection (c) of the Act of June 5, 1920, 41 Stat. 1008, 1009. The statutes also barred admission to the United States of "aliens who . . . knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed . . . any written or printed matter . . . advising, advocating, or teaching: (1) the overthrow by force or violence of the Government of the United States . . . ". *Ibid.*, subsection (d). And by § 2 of the Act of October 16, 1918, it was provided that any alien who, after entering the United States, "is found . . . to have become thereafter, a member of any one of the classes of

aliens" just enumerated, shall be taken into custody and deported. See *Kessler* v. *Strecker*, 307 U. S. 22. Quite apart from the want of attachment to the Constitution and the consequent disqualification of such aliens for citizenship, their belonging to any of these classes would disqualify them for citizenship since their presence in the United States, without which they cannot apply for citizenship, would be unlawful. And in the light of the evidence—presently to be discussed—even the Court's opinion concedes (p. 25) "We do not say that a reasonable man could not possibly have found, as the district court did, that the Communist Party in 1927 actively urged the overthrow of the Government by force and violence." In addition, the evidence makes it clear beyond all reasonable doubt that petitioner, up to the time of his naturalization, was an alien who knowingly circulated or distributed, or caused to be circulated or distributed, printed matter advocating the overthrow of the Government by force or violence.

Wholly apart from the deportation statute, the judgment should be affirmed because the trial court was justified in finding that petitioner, in 1927, was not and had not been attached to the principles of the Constitution. My brethren of the majority do not deny that there are principles of the Constitution. The Congress of 1795, which passed the statute requiring an applicant for naturalization to establish that he has "behaved as a man . . . attached to the principles of the constitution" (1 Stat. 414), evidently did not doubt that there were. For some of its members had sat in the Constitutional Convention. In the absence of any disclaimer I shall assume that there are such principles and that among them are at least the principle of constitutional protection of civil rights and of life, liberty and property, the principle of representative government, and the principle that constitutional laws are not to be broken down by planned disobedience. I assume also that all the principles of the Constitution are hostile to dictatorship and minority rule; and that it is a principle of our Constitution that change in the organization of our government is to be effected by the orderly procedures ordained by the Constitution and not by force or fraud. With these in mind, we may examine petitioner's behavior as disclosed by the record, during the five years which preceded his naturalization, in order to ascertain whether there was basis in the evidence for the trial judge's findings. In determining whether there was evidence supporting the finding of petitioner's want of

attachment to constitutional principles, courts must look, as the statute admonishes, to see whether in the five-year period petitioner behaved as a man attached to the principles of the Constitution. And we must recognize that such attachment or want of it is a personal attribute to be inferred from all the relevant facts and circumstances which tend to reveal petitioner's attitude toward those principles.

Petitioner, who is an educated and intelligent man, took out his first papers in 1924, when he was eighteen years of age, and was admitted to citizenship on June 10, 1927, when nearly twenty-two. Since his sixteenth year he has been continuously and actively engaged in promoting in one way or another the interests of various Communist Party organizations affiliated with and controlled as to their policy and action by the Third International, the parent Communist organization, which had its headquarters and its Executive Committee in Moscow.[3] The evidence shows petitioner's loyalty to the Communist Party organizations; that as a member of the Party he was subject to and accepted its political control, and that as a Party member his adherence to its political principles and tactics was required by its constitution.

Petitioner was born in Russia on August 1, 1905, and came to the United States in 1907 or 1908. In 1922, when a 16-year old student at a night high school in Los Angeles, he became one of the organizers and charter members of the Young Workers League of California. For two or three years—and during the five-year period which we are examining—he was educational director of the League; it was his duty "to organize forums and

[3] During the whole period relevant to this litigation, the Communist Party was a world organization, known as the Third Communist International (or Comintern), created in 1919, of which the Communist Parties in each country were sections. The supreme governing body of the Third Communist International— which exercised control of the Party program, tactics and organization—was the World Congress of the Communist International. Between meetings of the Congress its authority was vested in the Executive Committee of the Communist International. The resolutions of the Congress, and between meetings those of the Executive Committee, were binding on all sections. In the United States the Workers Party of America, a Communist organization, was established in 1921. It was affiliated with the Communist International, and had sent delegates to the Third World Congress of the International earlier in that year. The Workers Party of America has been since continued, and successively known as the Workers (Communist) Party and as the Communist Party of the United States of America. The Party sent accredited representatives to the Communist International and recognized the leadership of the International. It was affiliated with the Third International, of which it constituted a section. All the events with which this litigation is concerned occurred long prior to the dissolution of the Comintern in May 1943.

studies for classes". "My job was to register students in the classes and send out notices for meeting; in other words, to organize the educational activities of the League for which instructors were supplied". The outlines of the curriculum of this educational program were established by the League's national committee. The League (whose name was later changed to the Young Communist League) was affiliated with the Communist International.[4] In 1928, just after he was naturalized, petitioner became "organizer" or "director" of the League—"I was the official spokesman for the League and directed its administrative and political affairs and educational affairs". Petitioner was a delegate to the League's National Convention in 1922, and again in 1925. Meanwhile, on February 8, 1924, he had filed a declaration of intention to become a citizen of the United States.

At the end of 1924, petitioner joined the Workers Party (which later changed its name to the Workers Communist Party and still later to the Communist Party of the United States of America). The Party was a section of the Third International. The Party constitution, at the time petitioner became a member, provided (Article III, § 1) that "every person who accepts the principles and tactics of the Workers Party of America and agrees to submit to its discipline and engage actively in its work shall be eligible to membership". Applicants for membership were required (Article III, § 2) to sign an application card reading as follows: "The undersigned declares his adherence to the principles and tactics of the Workers Party of America as expressed in its program and constitution and agrees to submit to the discipline of the party and to engage actively in its work." It was likewise provided (Article X, §§ 1, 2) that "all decisions of the

[4] The Young Workers League was affiliated with the Young Communist International and the Communist International. It sent delegates to the Congress of the Young Communist International. It was also closely related to the Workers Party, and sent delegates to the Party Conventions. At its Third National Convention, the Party adopted the following resolution:

"The task of reaching the youth with the message of Communism, of interesting them in our cause and organizing them for the militant struggle against the existing social order and its oppression and exploitation is of major importance for the whole Communist movement. In carrying on this work the Young Workers League is preparing the fighters for Communism who will soon stand in the ranks of the Party as part of its best fighters."

The Second Year of the Workers Party of America. Report of The Central Executive Committee to the Third National Convention. Held in Chicago, Illinois, Dec. 30, 31, 1923 and Jan. 1, 2, 1924. Theses, Program, Resolutions. Published by the Literature Department, Workers Party of America, 1009 N. State St., Chicago, Ill. (p. 122.)

governing bodies of the Party shall be binding upon the membership and subordinate units of the organization", and that "any member or organization violating the decisions of the Party shall be subject to suspension or expulsion".[5] During 1925 and 1926 petitioner was "corresponding secretary" of the Workers Party in Los Angeles. As such, he wrote down the minutes and sent out communications for meetings; and a letter which he signed in his capacity as "city central secretary" indicates that he was in charge of outgoing correspondence with affiliates of the Party. In 1925 he attended the Party convention.

After his naturalization, petitioner attended the Sixth World Congress of the Communist International, at Moscow, in 1928; and from 1929 to 1930 he was district organizational secretary of the Party for a district which included Arizona, Nevada and California. At various subsequent times he was district organizer in Connecticut, in Minnesota, and in California. He ran twice as the Party's candidate for governor of Minnesota. He held other official positions in the Party, and at the time of the hearing in the district court was California State Secretary of the Party and a member of the State Central Committee. These facts, while not directly probative of his behavior during the five-year period 1922-1927, at least establish that his early devotion to the Party organizations was not transitory, nor inconsistent with his genuine and settled convictions.

The evidence shows and it is not denied that the Communist Party organization at the time in question was a revolutionary party having as its ultimate aim generally, and particularly in England and the United States, the overthrow of capitalistic government, and the substitution for it of the dictatorship of the proletariat. It sought to accomplish this through persistent indoctrination of the people in capitalistic countries with Party principles, by the organization in those countries of sections of the Third International, by systematic teaching of Party principles at meetings and classes held under Party auspices, and by the publication and distribution of Communist literature which constituted one of the basic principles of Party action.

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[5] Program and Constitution, Workers Party of America. Adopted at National Convention, New York City, December 24-25-26-27, 1921. Amended at National Convention, Chicago, Ill., December 30-31, 1923, and January 1, 1924. Published by Literature Department, Workers Party of America, 1113 W. Washington Boulevard, Chicago, Ill.

In accordance with the policy established at its Second World Congress in 1920, the Party press was brought under Party control through ownership of the various publication agencies. Strict adherence to Party principles was demanded of all publications, which were required to be edited by Party members of proved loyalty to the proletarian revolution. Propaganda was required to conform to the program and decisions of the Third International. Editors were removed and Party members expelled for noncompliance. Publications not conforming to Party principles were barred from Party classes.

Many such Communist Party publications were introduced at the trial and constitute a large part of the evidence in this case. Perusal of the record can leave no doubt of petitioner's unqualified loyalty to the Communist Party. His continuous services to the Party for twenty years in a great variety of capacities, and his familiarity with Party programs and literature, are convincing proof of his complete devotion to Communist Party principles, and his desire to advance them. Throughout he has been a diligent student of Party publications. Many of them were used in the Communist classes of which he was educational director in the years immediately preceding his naturalization. All were particularly brought to his attention as they were introduced in evidence and excerpts relative to the issues were discussed in open court. Except as may be later noted, he did not deny familiarity with them or disavow their teachings. They were the official exposition of the doctrines of the Party to which he had formally pledged his allegiance, diligently disseminated by him for the indoctrination of his fellow countrymen, especially the members of the Youth organizations of the Party. In the circumstances, and especially in the absence of any disavowal by petitioner or the assertion by him of ignorance of the principles which they proclaimed, they are persuasive evidence of the nature and extent of his want of attachment to the principles of the Constitution. In appraising them in this aspect it will be most useful to state in somewhat summary form some of the teachings of these publications, classified with reference to principles of the Constitution to which they relate, and to give a few typical examples, of which many more could be given from the evidence.

Unless otherwise noted, I shall refer only to those with which petitioner was familiar and which were published under the auspices of the Party and by its official publication agencies.

As I have said, it is not questioned that the ultimate aim of the Communist Party in 1927 and the years preceding was the triumph of the dictatorship of the proletariat and the consequent overthrow of capitalistic or bourgeois government and society. Attachment to such dictatorship can hardly be thought to indicate attachment to the principles of an instrument of government which forbids dictatorship and precludes the rule of the minority or the suppression of minority rights by dictatorial government. But the Government points especially to the methods by which that end was to be achieved to show that those who pursue or advocate such methods exhibit their want of attachment to the principles of the Constitution. Methods repeatedly and systematically advocated, in the Communist Party literature to which I have referred, include first a softening up process by which the breakdown and disintegration of capitalistic governments was to be achieved by systematic and general resort to violation of the laws, and second, the overthrow of capitalistic governments by force and violence.

It was proclaimed that "For all countries, even for most free 'legal' and 'peaceful' ones in the sense of a lesser acuteness in the class struggle, the period has arrived, when it has become absolutely necessary for every Communist party to join systematically lawful and unlawful work, lawful and unlawful organization. . . . The class struggle in almost every country of Europe and America is entering the phase of civil war. Under such conditions the Communists can have no confidence in bourgeois laws. They should create everywhere a parallel illegal apparatus, which at the decisive moment should do its duty by the party, and in every way possible assist the revolution. In every country where, in consequence of martial law or of other exceptional laws, the Communists are unable to carry on their work lawfully, a combination of lawful and unlawful work is absolutely necessary."[6]

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[6] See pp. 18, 28, of Statutes, Theses and Conditions of Admission to the Communist International. Adopted by the Second Congress of the Communist International, July 17 to August 7, 1920. The edition of this document in evidence in the present case was published in March, 1923, under the auspices of the Workers Party of America, and contained the following statement on the inside front cover:

"The Workers Party declares its sympathy with the principles of the Communist International and enters the struggle against American capitalism, the most powerful of the capitalist groups, under the inspiration and leadership of the Communist International.

"It rallies to the call 'WORKERS OF THE WORLD UNITE.'"

Petitioner testified that he had no recollection of "this particular edition" but that "I have no doubt that possibly a pamphlet" like it was sold in

"Opposition in principle to underground (illegal) work and an unwillingness to understand the absolute necessity for a Communist Party of combining legal with illegal work" was in fact one ground for expulsion from the Party of a minority faction.[7] Advocacy of illegal conduct generally was accompanied by advocacy of particular types of illegality. The Party was instructed to arouse workers to "mass violation" of an injunction "whenever and wherever an injunction is issued by courts against strikers".[8] In the literature of the period now in question unlawful tactics were particularly to be directed toward government armed forces. In addition to "systematic unlawful work", "it is especially necessary to carry on unlawful work in the army, navy, and police".[9] Refusal to participate in "persistent and systematic propaganda and agitation" in the army was "equal to treason to the revolutionary cause, and incompatible with affiliation with the Third International",[10] and this because "it is necessary, above all things, to undermine and destroy the army in order to overcome the bourgeoisie".[11]

There is abundant documentary evidence of the character already described to support the court's finding that the Com-

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Party bookstores. This document was marked for identification and the court later denied a motion to exclude it and other exhibits from the evidence. During the trial petitioner's counsel twice referred to the document as having been put in evidence. Petitioner's counsel included it, with all other exhibits in evidence or offered for identification, in his designation of the record to be made up in the circuit court of appeals. It was so included by order of the court. Despite the Government's oversight in failing formally to say that the exhibit was being introduced in evidence, it obviously was deemed to be in evidence by both the parties and the trial court. The exhibit is unquestionably relevant and competent evidence, and it became a part of the record before the courts below.

[7] See p. 94 of The 4th National Convention of the Workers (Communist) Party of America. Held in Chicago, Ill., August 21-30, 1925. Published by the Daily Worker Publishing Co., 1113 W. Washington Blvd., Chicago, Ill. The publisher's notice inside the back cover stated that this pamphlet was "absolutely indispensable to any member of the party". The pamphlet, which was the official report of the convention, was sold and circulated by the Party in Los Angeles in 1925. Petitioner disclaimed familiarity with the literature of this convention, but testified that he had attended the convention. He also testified he was in agreement with the general program and principles of the Workers (Communist) Party.

[8] *Ibid.* p. 107. This was part of a resolution, adopted unanimously by the Party Convention, relating to "Party Policies for Trade Union Work".

[9] Statutes, Theses and Conditions of Admission to the Communist International [see note 6, *supra*], p. 19.

[10] *Ibid.* p. 28.

[11] A B C of Communism, p. 69. This was written by N. Bucharin & E. Preobraschensky, in 1919, translated into English in June, 1921, and published between 1920 and 1924 by the Lyceum-Literature Department, Workers Party

munist Party organizations, of which petitioner was a member, diligently circulated printed matter which advocated the overthrow of the Government of the United States by force and violence, and that petitioner aided in that circulation and advocacy. From the beginning, and during all times relevant to this inquiry, there is evidence that the Communist Party organizations advocated the overthrow of capitalistic governments by revolution to be accomplished, if need be, by force of arms. We need not stop to consider the much discussed question whether this meant more than that force was to be used if established governments should be so misguided as to refuse to make themselves over into proletarian dictatorships by amendment of their governmental structures, or should have the effrontery to defend themselves from lawless or subversive attacks. For in any case the end contemplated was the overthrow of government, and the measures advocated were force and violence.

The fountain head of Communist principles, the Communist Manifesto, published by Marx and Engels in 1848, had openly proclaimed that Communist ends could be attained "only by the forcible overthrow of all existing social conditions". After 1920 these teachings were revived and restated in Party publications which, in the period we are now considering, were used in the Communist educational program that petitioner was directing. They recognized that "the proletarian revolution is impossible without the violent destruction of the bourgeois governmental machine and the putting of a new one in its place"; that "the dictatorship of the proletariat cannot be the result of the peaceful development of bourgeois society and democracy; it can be the result only of the destruction of the bourgeois army and State machine, the bourgeois administrative apparatus and the whole bourgeois political system"; that "the dictatorship of the proletariat is born not of the bourgeois state of things, but of its destruction after the overthrow of the bourgeoisie, of the expropriation of landed proprietors and capitalists, of the socialization of the essential instruments and means of production, of the de-

of America, 799 Broadway, New York City. There was evidence that this pamphlet was a basic work of Party study classes in 1924 and 1925; that it was expressly designed for such purposes, was officially circulated by the Party, and was still advertised by the Workers Library Publishers in 1928. Petitioner testified that he had read the work and was familiar with it, although he said that the authors had later been expelled from the Russian Communist Party.

velopment of the proletarian revolution through violence. The dictatorship of the proletariat is the revolutionary power resting on violence against the bourgeoisie."[12]

Petitioner testified that at the time of his naturalization he subscribed to the philosophy and principles of socialism as manifested in the writings of Lenin. *The State and Revolution*, by Lenin, with which petitioner was familiar, and which was circulated by the Literature Department of the Communist Party in 1924 and 1925 and used by Communist Party classes, declared: "The necessity of systematically fostering among the masses this and only this point of view about violent revolution lies at the root of the whole of Marx's and Engels' teaching, and it is just the neglect of such propaganda and agitation both by the present predominant Social-Chauvinists and the Kautskian schools that brings their betrayal of it into prominent relief."[13] And in order that there might be no misunderstanding of the term "revolution", Engels' definition of revolution was revived and restated as follows: "Revolution is an act in which part of the population forces its will on the other parts by means of rifles, bayonets, cannon, i.e. by most authoritative means. And the conquering party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionaries."[14] "That which before the victory of the proletariat seems but a theoretical difference of opinion on the question of 'democracy', becomes inevitably on the morrow of the victory, a question which can only be decided by force of arms."[15] "The working class cannot achieve victory over the bourgeois by means of the general strike alone, and by the policy of folded arms. The proletariat must resort to an armed uprising."[16] "To say that the revolution can be achieved without civil war is to say that a 'peaceful' revolution is possible. . . . Marx was a believer in civil war—that is, the armed struggle

[12] The Theory and Practice of Leninism, by Stalin, pp. 33, 32, 30-31. Published for the Workers Party of America by the Daily Worker Publishing Co., Chicago, Ill. This pamphlet was used in Communist Party classes in 1924 and 1925, and was circulated by the Literature Department of the Communist Party and sold in Party bookshops. Five thousand copies were published between January 15 and August 1, 1925.

[13] P. 16, new edition, April, 1924. Published for the Workers Party of America by The Daily Worker Publishing Co., Chicago, Ill.

[14] *Ibid.*, p. 44.

[15] Statutes, Theses and Conditions of Admission to the Communist International (see note 6, *supra*), p. 15.

[16] *Ibid.*, p. 36.

of the proletariat against the bourgeoisie. . . . The teachers of Socialism took the revolution very seriously. It was clear to them that the proletariat could not convert the bourgeoisie, and that the workers would have to impose their will upon their enemies through a war carried on by guns and bayonets."[17]

The Party teachings in this and other publications were that revolution by force of arms was a universal principle and consequently one which embraced the United States, and obviously was intended to do so when taught in Communist classes in the United States. Communist publications in evidence were at pains to point out that "Marx's limitation with regard to the 'continent' has furnished the opportunists and mensheviks of every country with a pretext for asserting that Marx admitted the possibility of a peaceful transformation of bourgeois democracy into proletariat democracy, at least [in] some countries (England and America). . . . But now the situation in these countries is radically different. Imperialism has reached its apogee there, and there militarism and bureaucracy are sovereign. In consequence Marx's restriction no longer applies."[18]

In order to determine whether petitioner's behavior established his attachment to the principles of the Constitution we are entitled to consider the political system which his Party proposed to establish and toward which his own efforts in promoting the Communist cause were directed. About this there is and can be no serious dispute. Under the new system existing constitutional principles were to be abandoned. In the new government to be established by the Communists, the freedoms guaranteed by the Bill of Rights were to be ended. ". . . There can be no talk of 'freedom' for everybody. The dictatorship of the proletariat is incompatible with the freedom of the bourgeoisie. The dictatorship is, in fact, necessary to deprive the bourgeoisie of their freedom, to chain them hand and foot in order to make it absolutely impossible for them to fight the revolutionary proletariat."[19] There was to be "immediate and unconditional confiscation of the estates of the landowners and big landlords" and "no propaganda can be admitted in the ranks of the Communist parties in

[17] A B C of Communism [see note 12, *supra*], pp. 109-10.

[18] The Theory and Practice of Leninism, by Stalin [see note 12, *supra*], p. 32. To the same effect see The State and Revolution, by Lenin [note 13, *supra*], p. 26.

[19] A B C of Communism [see note 11, *supra*], pp. 65-66.

favor of an indemnity to be paid to the owners of large estates for their expropriation."[20] The new state was not to include "representatives of the former ruling classes".[21] "The dictatorship of the proletariat cannot be a 'complete democracy, a democracy for *all*, for rich and poor alike: it has to be a State that is democratic, but only *for the proletariat and the propertyless*, a State that is dictatorial, but only *against the bourgeoisie*. . . . Under the dictatorship of the proletariat, democracy *is proletarian*: it is democracy for the exploited majority, based on the limitation of the rights of the exploiting minority and directed against this minority."[22]

The aims of the Communists could be achieved only by "the annihilation of the entire bourgeois governmental apparatus, parliamentary, judicial, military, bureaucratic, administrative, municipal", and it was necessary for the Communists "to break and destroy" the "apparatus".[23] The annihilation of the existing political structure was deemed as necessary in the United States as elsewhere.[24] If elected to public office the Communist was directed to "facilitate this task of destruction" of the existing "apparatus", since the "bourgeois State organizations" were to be utilized only "with the object of destroying them".[25]

It is unnecessary to give further examples of the teachings of Communist Party organizations with which the documentary evidence is shot through and through. Appended to this opinion are excerpts from two exhibits. These have been chosen, not because they prove more than others but only because they express in short form ideas which permeate all. The evidence, as a whole, and the exhibits which we have especially mentioned, show a basis for finding in the Party teachings, during the period in question, an unqualified hostility to the most fundamental and universally recognized principles of the Constitution. On the argument we were admonished that petitioner favored chan_e in our form

[20] Statutes, Theses and Conditions of Admission to the Communist International [see note 6, *supra*], p. 82.

[21] *Ibid.*, p. 46.

[22] The Theory and Practice of Leninism, by Stalin [see note 12, *supra*], pp. 31-32.

[23] Statutes, Theses and Conditions of Admission to the Communist International [see note 6, *supra*], pp. 11, 44.

[24] See note 18, *supra*.

[25] Statutes, Theses, and Conditions of Admission to the Communist International [see note 6, *supra*], pp. 44, 45, 46.

of government which is itself a principle of the Constitution, since the Constitution provides for its own amendment, and that in any case the Communist Party had greatly modified its aims in more recent years. It is true that the Constitution provides for its own amendment by an orderly procedure but not through the breakdown of our governmental system by lawless conduct and by force. It can hardly satisfy the requirement of "attachment to the principles of the Constitution" that one is attached to the means for its destruction. And whether at some time after 1927 the Party may have abandoned these doctrines is immaterial.

It would be little short of preposterous to assert that vigorous and unswerving given by a pledged Party member in disseminating the Party teachings to which reference has been made, is compatible with attachment to the principles of the Constitution. On the record before us it would be difficult for a trial judge to conclude that petitioner was not well aware that he was a member of and aiding a party which taught and advocated the overthrow of the Government of the United States by force and violence. It would be difficult also to find as a fact that petitioner behaved as a man attached to the principles of the Constitution. The trial judge found that he did not. And the same evidence would seem to furnish plain enough support for the trial judge's further finding that petitioner did not behave as a man attached "to the good order and happiness" of the United States.

Petitioner's pledge of adherence to Communist Party principles and tactics and his membership in the Communist organizations, were neither passive nor indolent. His testimony shows clearly that during the crucial years he was a young man of vigorous intellect and strong convictions. He spent his time actively arranging for the dissemination of a gospel of which he never has asserted either ignorance or disbelief. His wide acquaintance with Party literature, and his zealous promotion of Party interests for many years, preclude the supposition that he did not know the character of its teachings and did not aid in their advocacy. They are persuasive that he was without attachment to the constitutional principles which those teachings aimed to destroy. Yet the Court's opinion seems to tell us that the trier of fact must not examine petitioner's gospel to find out what kind of man he was, or even what his gospel was, that the trier of fact could not "impute" to petitioner any genuine attachment to the doctrines of these

organizations whose teachings he so assiduously spread. It might as well be said that it is impossible to infer that a man is attached to the principles of a religious movement from the fact that he conducts its prayer meetings, or, to take a more sinister example, that it could not be inferred that a man is a Nazi and consequently not attached to constitutional principles who, for more than five years, had diligently circulated the doctrines of *Mein Kampf*.

In neither case of course is the inference inevitable. It is possible, though not probable or normal, for one to be attached to principles diametrically opposed to those, to the dissemination of which he has given his life's best effort. But it is a normal and sensible inference which the trier of fact is free to make that his attachment is to those principles rather than to constitutional principles with which they are at war. A man can be known by the ideas he spreads as well as by the company he keeps. And when one does not challenge the proof that he has given his life to spreading a particular class of well-defined ideas, it is convincing evidence that his attachment is to them rather than their opposites. In this case it is convincing evidence that petitioner, at the time of his naturalization, was not entitled to the citizenship he procured because he was not attached to the principles of the Constitution of the United States and because he was not well disposed to the good order and happiness of the same.

Mr. Justice ROBERTS and Mr. Justice FRANKFURTER join in this dissent.

APPENDIX.

Excerpts from Exhibit 26—STATUTES, THESES AND CONDITIONS OF ADMISSION TO THE COMMUNIST INTERNATIONAL [see note 6, *supra*]:

"The Communist International makes its aim to put up an armed struggle for the overthrow of the International bourgeoisie and to create an International Soviet Republic as a transition stage to the complete abolition of the State. The Communist International considers the dictatorship of the proletariat as the only means for the liberation of humanity from the horrors of capitalism. The Communist International considers the Soviet form of government as the historically evolved form of this dictatorship of the proletariat." (p. 4)

"Under the circumstances which have been created in the whole world, and especially in the most advanced, most powerful, most enlightened and freest capitalist countries by militarist imperialism—oppression of colonies and weaker nations, the universal imperialist slaughter, the 'peace' of Versailles—to admit the idea of a voluntary submission of the capitalists to the will of the majority of the exploited, of a peaceful, reformist passage to Socialism, is not only to give proof of an extreme petty bourgeois stupidity, but it is a direct deception of the workmen, a disguisal of capitalist wage-slavery, a concealment of the truth. This truth is that the bourgeoisie, the most enlightened and democratic portion of the bourgeoisie, is even now not stopping at deceit and crime, at the slaughter of millions of workmen and peasants, in order to retain the right of private ownership over the means of production. Only a violent defeat of the bourgeoisie, the confiscation of its property, the annihilation of the entire bourgeois governmental apparatus, parliamentary, judicial, military, bureaucratic, administrative, municipal, etc., even the individual exile or internment of the most stubborn and dangerous exploiters, the establishment of a strict control over them for the repression of all inevitable attempts at resistance and restoration of capitalist slavery—only such measures will be able to guarantee the complete submission of the whole class of exploiters." (p. 11)

"That which before the victory of the proletariat seems but a theoretical difference of opinion on the question of 'democracy', becomes inevitably on the morrow of the victory, a question which can only be decided by force of arms." (p. 15)

"For all countries, even for most free 'legal' and 'peaceful' ones in the sense of a lesser acuteness in the class struggle, the period has arrived, when it has become absolutely necessary for every Communist party to join systematically lawful and unlawful work, lawful and unlawful organization." (p. 18)

"It is especially necessary to carry on unlawful work in the army, navy, and police, as, after the imperialist slaughter, all

the governments in the world are becoming afraid of the national armies, open to all peasants and workingmen, and they are setting up in secret all kinds of select military organizations recruited from the bourgeoisie and especially provided with improved technical equipment." (p. 19)

"The class struggle in almost every country of Europe and America is entering the phase of civil war. Under such conditions the Communists can have no confidence in bourgeois laws. They should create everywhere a parallel illegal apparatus, which at the decisive moment should do its duty by the party, and in every way possible assist the revolution. In every country where, in consequence of martial law or of other exceptional laws, the Communists are unable to carry on their work lawfully, a combination of lawful and unlawful work is absolutely necessary." (p. 28)

"A persistent and systematic propaganda and agitation is necessary in the army, where Communist groups should be formed in every military organization. Wherever, owing to repressive legislation, agitation becomes impossible, it is necessary to carry on such agitation illegally. But refusal to carry on or participate in such work should be considered equal to treason to the revolutionary cause, and incompatible with affiliation with the Third International." (p. 28)

"Each party desirous of affiliating with the Communist International should be obliged to render every possible assistance to the Soviet Republics in their struggle against all counter-revolutionary forces. The Communist parties should carry on a precise and definite propaganda to induce the workers to refuse to transport any kind of military equipment intended for fighting against the Soviet Republics, and should also by legal or illegal means carry on a propaganda amongst the troops sent against the workers' republics, etc." (p. 30)

"The world proletariat is confronted with decisive battles. We are living in an epoch of civil war. The critical hour has struck. In almost all countries where there is a labor movement of any importance the working class, arms in hand, stands in the midst of fierce and decisive battles. Now more than ever is the working class in need of a strong organization. Without losing an hour of invaluable time, the working class must keep on indefatigably preparing for the impending decisive struggle." (p. 33)

"Until the time when the power of government will have been finally conquered by the proletariat, until the time when the proletarian rule will have been firmly established beyond the possibility of a bourgeois restoration, the Communist Party will have of its organized ranks only a minority of the workers. Up to the time when the power will have been seized by it, and during the transition period, the Communist Party may, under favorable conditions, exercise undisputed moral and political influence over

all the proletarian and semi-proletarian classes of the population; but it will not be able to unite them within its ranks. Only when the dictatorship of the workers has deprived the bourgeoisie of such powerful weapons as the press, the school, parliament, the church, the government apparatus, etc.; only when the final overthrow of the capitalist order will have become an evident fact—only then will all or almost all the workers enter the ranks of the Communist Party." (pp. 33-34)

"The working class cannot achieve the victory over the bourgeoisie by means of the general strike alone, and by the policy of folded arms. The proletariat must resort to an armed uprising." (p. 36)

"As soon as Communism comes to light, it must begin to elucidate the character of the present epoch (the culminations of capitalism, imperialistic self-negation and self-destruction, uninterrupted growth of civil war, etc.). Political relationships and political groupings may be different in different countries, but the essence of the matter is everywhere the same: we must start with the direct preparation for a proletarian uprising, politically and technically, for the destruction of the bourgeoisie and for the creation of the new proletarian state.

"Parliament at present can in no way serve as the arena of a struggle for reform, for improving the lot of the working people, as it has at certain periods of the preceding epoch. The centre of gravity of political life at present has been completely and finally transferred beyond the limits of parliament. On the other hand, owing not only to its relationship to the working masses, but also to the complicated mutual relations within the various groups of the bourgeois itself, the bourgeoisie is forced to have some of its policies in one way or another passed through parliament, where the various cliques haggle for power, exhibit their strong sides and betray their weak ones, get themselves unmasked, etc., etc. Therefore it is the immediate historical task of the working class to tear this apparatus out of the hands of the ruling classes, to break and destroy it, and to create in its place a new proletarian apparatus. At the same time, however, the revolutionary general staff of the working class is vitally concerned in having its scouting parties in the parliamentary institutions of the bourgeoisie, in order to facilitate this task of destruction." (pp. 44-45)

"Parliamentarism cannot be a form of proletarian government during the transition period between the dictatorship of the bourgeoisie and that of the proletariat. At the moment when the accentuated class struggle turns into civil war, the proletariat must inevitably form its own organization for a fighting organization, which cannot contain any of the representatives of the overthrown ruling classes, all parts of whose material will are inimical to the proletariat at that time, and a parliamentary division of

authority is needless and injurious to it; the only form of proletarian dictatorship is a Republic of Soviets.

"The bourgeois parliaments, which constitute one of the most important apparatus of the State machinery of the bourgeoisie, cannot be won over by the proletariat any more than can the bourgeois order in general. The task of the proletariat consists in blowing up the whole machinery of the bourgeoisie, in destroying it, and all the parliamentary institutions with it, whether they be republican or constitutional-monarchical." (pp. 45-46)

"Consequently, Communism repudiates parliamentarism as the form of the future; it renounces the same as a form of the class dictatorship of the proletariat; it repudiates the possibility of winning over the parliaments; its aim is to destroy parliamentarism. Therefore it is only possible to speak of utilizing the bourgeois State organizations with the object of destroying them. The question can only and exclusively be discussed on such a plane.

"All class struggle is a political struggle, because it is finally a struggle for power. Any strike, when it spreads through the whole country, is a menace to the bourgeois State, and thus acquires a political character. To strive to overthrow the bourgeoisie, and to destroy its State, means to carry on political warfare. To create one's own class apparatus—for the bridling and suppression of the resisting bourgeoisie, whatever such an apparatus may be—means to gain political power." (p. 46)

"The mass struggle means a whole system of developing demonstrations growing ever more acute in form, and logically leading to an uprising against the capitalist order of government. In this warfare of the masses developing into a civil war, the guiding party of the proletariat must, as a general rule, secure every and all lawful positions, making them its auxiliaries in the revolutionary work, and subordinating such positions to the plans of the general campaign, that of the mass struggle." (p. 47)

"On the other hand, an acknowledgement of the value of parliamentary work in no wise leads to an absolute, in-all-and-any-case acknowledgement of the necessity of concrete elections and a concrete participation in parliamentary sessions. The matter depends upon a series of specific conditions. Under certain circumstances it may become necessary to leave the parliament. The Bolsheviks did so when they left the pre-parliament in order to break it up, to weaken it, and to set up against it the Petrograd Soviet, which was then prepared to head the uprising; they acted in the same way in the Constituent Assembly on the day of its dissolution, converting the Third Congress of Soviets into the centre of political events. In other circumstances a boycotting of the elections may be necessary, and a direct, violent storming of both the great bourgeois State apparatus and the parliamentary bourgeois clique, or a participation in the elections with a boycott of the parliament itself, etc.

"In this way, while recognizing as a general rule the necessity of participating in the election to the central parliament, and the institutions of local self-government, as well as in the work in such institutions, the Communist Party must decide the question concretely, according to the specific conditions of the given moment. Boycotting the elections or the parliament, or leaving the parliament, is permissible, chiefly when there is a possibility of an immediate transition to an armed fight for power." (p. 49)

"A Communist delegate, by decision of the Central Committee, is bound to combine lawful work with unlawful work. In countries where the Communist delegate enjoys a certain inviolability, this must be utilized by way of rendering assistance to illegal organizations and for the propaganda of the party." (p. 51)

"Each Communist member [of the legislature] must remember that he is not a 'legislator' who is bound to seek agreements with the other legislators, but an agitator of the Party, d tailed into the enemy's camp in order to carry out the orders of the Party there. The Communist member is answerable not to the wide mass of his constituents, but to his own Communist Party — whether lawful or unlawful." (p. 52)

"The propaganda of the right leaders of the Independents [Hilferding, Kautsky, and others], proving the compatibility of the Soviet 'system' with the bourgeois Constituent Assembly, is either a complete misunderstanding of the laws of development of a proletarian revolution, or a conscious deceiving of the working class. The Soviets are the dictatorship of the proletariat. The Constituent Assembly is the dictatorship of the bourgeoisie. To unite and reconcile the dictatorship of the working class with that of the bourgeoisie is impossible." (p. 64)

"After the victory of the proletariat in the towns, this class [the landed peasants or farmers] will inevitably oppose it by all means from sabotage to open armed counter-revolutionary resistance. The revolutionary proletariat must, therefore, immediately begin to prepare the necessary force for the disarmament of every single man of this class, and together with the overthrow of the capitalists in industry, the proletariat must deal a relentless, crushing blow to this class. To that end it must arm the rural proletariat and organize Soviets in the country, with no room for exploiters, and a preponderant place must be reserved to the proleterians and the semi-proleterians." (p. 80)

"The revolutionary proletariat must proceed to an immediate and unconditional confiscation of the estates of the landowners and big landlords . . . . No propaganda can be admitted in the ranks of the Communist parties in favor of an indemnity to be paid to the owners of large estates for their expropriation." (p. 82)

Excerpts from Exhibit 8 — THE STATE AND REVOLUTION, by Lenin [see note 13, *supra*]:

"We have already said above and shall show more fully at a later stage that the teaching of Marx and Engels regarding the inevitability of a violent revolution refers to the capitalist State. It cannot be replaced by the proletarian State (the dictatorship of the proletariat) through mere 'withering away', but, in accordance with the general rule, can only be brought about by a violent revolution. The hymn sung in its honor by Engels and fully corresponding to the repeated declarations of Marx (see the concluding passages of the Poverty of Philosophy and the Communist Manifesto, with its proud and open declaration of the inevitability of a violent revolution; also Marx's Criticism of the Gotha Program of 1875, in which, thirty years after, he mercilessly castigates its opportunist character)—this praise is by no means a mere 'impulse', a mere declamation, or a mere polemical sally. The necessity of systematically fostering among the masses this and only this point of view about violent revolution lies at the root of the whole of Marx's and Engels' teaching, and it is just the neglect of such propaganda and agitation both by the present predominant Social-Chauvinists and the Kautskian schools that brings their betrayal of it into prominent relief.

"The substitution of a proletarian for the capitalist State is impossible without violent revolution, while the abolition of the proletarian State, that is, of all States, is only possible through 'withering away.'" (pp. 15-16)

"The State is a particular form of organization of force; it is the organization of violence for the purpose of holding down some class. What is the class which the proletariat must hold down? It can only be, naturally, the exploiting class, i. e., the bourgeoisie. The toilers need the State only to overcome the resistance of the exploiters, and only the proletariat can guide this suppression and bring it to fulfilment—the proletariat, the only class revolutionary to the finish, the only class which can unite all the toilers and the exploited in the struggle against the capitalist class for its complete displacement from power." (pp. 17-18)

"The doctrine of the class-war, as applied by Marx to the question of the State and of the Socialist revolution, leads inevitably to the recognition of the political supremacy of the proletariat, of its dictatorship, i. e., of an authority shared with none else and relying directly upon the armed force of the masses. The overthrow of the capitalist class is feasible only by the transformation of the proletariat into the ruling class, able to crush the inevitable and desperate resistance of the bourgeoisie, and to organize, for the new settlement of economic order, all the toiling and exploited masses.

"The proletariat needs the State, the centralized organization of force and violence, both for the purpose of guiding the great mass of the population—the peasantry, the lower middle-class, the semi-proletariat—in the work of economic Socialist reconstruction." (pp. 18-19)

"But, if the proletariat needs the State, as a particular form of organization of force against the capitalist class, the question almost spontaneously forces itself upon us: Is it thinkable that such an organization can be created without a preliminary breaking up and destruction of the machinery of government created for its own use by the capitalist class? The Communist Manifesto leads us straight to this conclusion, and it is of this conclusion that Marx wrote summing up the practical results of the revolutionary experience gained between 1849 and 1851." (p. 19)

"Hence Marx excluded England, where a revolution, even a people's revolution, could be imagined and was then possible, without the preliminary condition of the destruction 'of the available ready machinery of the State'.

"Today, in 1917, in the epoch of the first great imperialist war, this distinction of Marx's becomes unreal, and England and America, the greatest and last representatives of Anglo-Saxon 'liberty', in the sense of the absence of militarism and bureaucracy, have today completely rolled down into the dirty, bloody morass of military-bureaucratic institutions common to all Europe, subordinating all else to themselves. Today, both in England and in America, the 'preliminary condition of any real people's revolution' is the break-up, the shattering of the 'available ready machinery of the State' (perfected in those countries between 1914 and 1917, up to the 'European' general imperialist standard)." (p. 26)

"But from this capitalist democracy—inevitably narrow, stealthily thrusting aside the poor, and therefore to its core, hypocritical and treacherous—progress does not march along a simple, smooth and direct path to 'greater and greater democracy', as the Liberal professors and the lower middle class Opportunists would have us believe. No, progressive development—that is, towards Communism—marches through the dictatorship of the proletariat; and cannot do otherwise, for there is no one else who can break the resistance of the exploiting capitalists, and no other way of doing it.

"And the dictatorship of the proletariat—that is, the organization of the advance-guard of the oppressed as the ruling class, for the purpose of crushing the oppressors—cannot produce merely an expansion of democracy. Together with an immense expansion of democracy—for the first time becoming democracy for the poor, democracy for the people, and not democracy for the rich folk—the dictatorship of the proletariat will produce a series of restrictions of liberty in the case of the oppressors, ex-

ploiters, and capitalists. We must crush them in order to free humanity from wage-slavery: their resistance must be broken by force. It is clear that where there is suppression there must also be violence, and there cannot be liberty or democracy.

"Engels expressed this splendidly in his letter to Bebel when he said, as the reader will remember, that 'the proletariat needs the State, not in the interests of liberty, but for the purpose of crushing its opponents; and, when one will be able to speak of freedom, the State will have ceased to exist.'

"Democracy for the vast majority of the nation, and the suppression by force—that is, the exclusion from democracy—of the exploiters and oppressors of the nation: this is the modification of democracy which we shall see during the transition from Capitalism to Communism." (pp. 63-64)

"Again, during the transition from Capitalism to Communism, suppression is still necessary; but in this case it is the suppression of the minority of exploiters by the majority of exploited. A special instrument, a special machine for suppression—that is, the 'State'—is necessary, but this is now a transitional State, no longer a State in the ordinary sense of the term. For the suppression of the minority of exploiters by the majority of those who were but yesterday wage slaves, is a matter comparatively so easy, simple and natural that it will cost far less bloodshed than the suppression of the risings of the slaves, serfs or wage laborers, and will cost the human race far less." (pp. 64-65)

Mr. Justice JACKSON.

I do not participate in this decision. This case was instituted in June of 1939 and tried in December of that year. In January 1940, I became Attorney General of the United States and succeeded to official responsibility for it. 309 U. S. iii. This I have considered a cause for disqualification, and I desire the reason to be a matter of record.